
ROLE OF INTELLECTUAL PROPERTY IN GASTRONOMIC TOURISM

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ABSTRACT:

Gastronomic Tourism is a rapidly growing tourism sector that focuses on tourists' experience on food and food-related activities during their travel. This sector comprises of various types of culinary experiences such as local food market visits and involves multiple stakeholders. So, different Intellectual Property tools can be used to protect the rights of these stakeholders and enhance their monetizing capacity such as geographical indications, trademarks, etc. This paper is an analytical study of the different Intellectual Property tools and their application in Gastronomic Tourism.

In the field of Gastronomic Tourism, Geographical Indications ('GI') help in promoting the unique attributes of the products based on their geographical area, which the stakeholders can utilize in many ways. For instance, food festivals can make use of ingredients with GI, which enhances their integrity and branding. Trade Secrets can help protect culinary recipes, methods of production of ingredients, etc. The menu cards of restaurants, food-plating, brochures, and recipe books can be protected under copyrights as they are included in literary or artistic works. But they should satisfy the prerequisites of originality and fixation to be given copyright protection. Trademarks, including collective marks, certification marks, etc., can be used to protect the names, logos, slogans, etc., of the dishes, restaurants, producers and local organizations associated with gastronomic tourism. On the other hand, trade dress can help in protecting the visual features of a culinary product such as food plating. These trademarks help promote the stakeholders' brand value and ensure the standard of the products.

Though there are certain barriers inhibiting the usage of Intellectual Property tools in Gastronomic Tourism such as the lack of clarity in the current legal framework, the requirement of considerable funds and cooperation between different market actors, etc., the application of these tools can help in increasing the brand value, visibility and assist in promoting the Gastronomic Tourism sector in the long run.

Keywords: Gastronomic Tourism, Culinary Tourism, Food Plating, Intellectual Property in food tourism.

INTRODUCTION:

Tourism is one of the largest and highly profitable industries in the world. In the year 2021, the direct contribution to GDP from the Travel and Tourism Industry was approximately 5.8 billion US dollars which shows that the industry is extremely competitive and can be exploited by different nations.¹ In contrast to other major industries, the Tourism Industry consists of many sub-sectors, such as Accommodation, Transport, etc. Out of these sectors, Gastronomic Tourism is a rapidly growing phenomenon across the globe as more than one-third of the expenditure of tourists is spent on food and activities related to food, according to the World Tourism Organization Report.² “Gastronomic Tourism is defined as the type of tourism which is based on the experience of tourists related to food and related activities during their travel”, according to the Committee on Tourism and Competitiveness of UNWTO.³ These activities include traditional, authentic and innovative culinary experiences, visits to local food producers, food festivals and classes on cooking traditional and authentic recipes.⁴ With the interplay of various stakeholders involved in this type of tourism ranging from the restaurants of traditional food, MSME producing local food products, hosts of the food festivals, etc., there is a need for the usage of intellectual property rights to protect the rights of different actors involved in this industry. *So, this paper aims to explore the application and usage of some of the Intellectual Property Tools in the Gastronomic Tourism Sector.*

INTELLECTUAL PROPERTY TOOLS IN GASTRONOMIC TOURISM:

To improve monetising capacity and protect the rights of the people involved in Gastronomic Tourism, various Intellectual Property tools (‘IP Tools’) can be utilized, such as copyrights, trademarks, certification marks, collective marks, geographical indications, trade secrets, industrial design, etc.⁵ The protection under Trademarks can be extended to names of the dishes and restaurants, logos of the restaurants, slogans related to them, etc. Trade secrets can be used to protect the secret recipes of the specific food items, list of providers of the raw materials and

¹ ‘Global tourism industry - statistics & facts’ (STATISTA, 22 November 2022)

<https://www.statista.com/topics/962/global-tourism/#topicHeader__wrapper> accessed 26 December 2022

² Georgică Gheorghe, Petronela Tudorache and Puiu Nistoreanu, ‘Gastronomic Tourism, A New Trend for Contemporary Tourism??’ (2014) 9 Cactus Tourism Journal 12, 13

³ UNWTO, ‘Gastronomy and Wine Tourism’ (UNWTO) <<https://www.unwto.org/gastronomy-wine-tourism>> accessed 10 October 2022

⁴ *ibid.*

⁵ Alberta Ahmad Rasmi and others, ‘Geographical Indication for Gastronomy Tourism: Maximising Intellectual Property Value and Branding’ (2022) 21(2) Academy of Strategic Management Journal

<<https://www.abacademies.org/articles/geographical-indication-for-gastronomy-tourism-maximising-intellectual-property-value-and-branding-14250.html>> accessed 10 October 2022

traditional ingredients, the ratio of mixing the spices, etc. The works such as restaurant menu cards, cooking videos, advertisement materials and brochures, etc., can be covered under copyright laws. The specific ingredients and products used in the recipes can be protected under geographical indications. Collective marks can ensure the features of the food products, while certification marks can be utilized to ensure the standards of the products produced to improve consumer trust and reliability. The packaging of the food products, etc., can be protected under the category of Industrial design to ensure that the packaging is not copied by any other third parties. This indicates how the different IP Tools can be utilized by the stakeholders in the Gastronomic Tourism Industry to protect their property and improve the profitability of the sector.

GEOGRAPHICAL INDICATION (GI):

A GI is a sign which indicates the relation between the quality or reputation of the product and its territory of origination. On the other hand, an appellation of origin (AO) is a type of GI where the link to the place of origin is stronger than GI, and the whole production process takes place in the place of origin.⁶ **Article 22 of the TRIPS Agreement** embodies the definition of GI and the protections granted under GI. In the Indian perspective, the government enacted the **Geographical Indications of Good (Registration and Protection) Act, of 1999**, in furtherance of its obligations under the TRIPS Agreement. There have been various GIs and AOs granted to different products across the world, including food and agricultural produce such as Gruyere Cheese from Switzerland, Darjeeling Tea (India), Penja Pepper (Cameroon), etc.

In the field of Gastronomic Tourism, the usage of GIs will help promote the distinctive characteristics of certain products tied to their geographical area, attracting culinary tourists to such areas. Food Festivals based on culinary products produced or unique to a particular region can be enhanced by using ingredients possessing GIs or AOs. This contributes to the festival's integrity and brand mark as well. For example, Parmigiano-Reggiano is a famous cheese which was registered as an AO under the Lisbon Agreement.⁷ and Vale of Evesham Asparagus is a

⁶ WIPO, 'Frequently Asked Questions: Geographical Indications' (*WIPO*)
<https://www.wipo.int/geo_indications/en/faq_geographicalindications.html#:~:text=The%20basic%20difference%20between%20the,essentially%20from%20its%20geographical%20origin> accessed 10 October 2022

⁷ WIPO, 'The King of Cheese and its IP Crown' (*WIPO*)
<<https://www.wipo.int/ipadvantage/en/details.jsp?id=3664>> accessed 10 October 2022

registered 'Protected Geographical Indication' in the UK.⁸ So, the Festival of Parmigiano-Reggiano, which celebrates Parmigiano-Reggiano and the British-Asparagus Festival, which celebrates Vale of Evesham Asparagus, indicate how food festivals capitalize on the GIs and AOs of their food products which also enhances tourism.⁹ In the Indian Context, there are multiple food products protected under GI, such as Bikaneri Bhujia, Hyderabad Haleem, Coorg Arabica Coffee, Mysore Betel Leaf, Srivilliputtur Palkova, etc., which can help in attracting Gastronomic Tourists through effective promotion.¹⁰

But the mere presence of GI will not lead to economic success, and the onus is on the stakeholders of the Gastronomic Tourism Industry to promote the GI effectively. The GI can be used as a branding tool by the chefs, restaurants and producers of traditional culinary dishes when making use of the ingredients having a registered GI. This can be utilized to portray the higher quality of the concerned dishes and, thereby, help in attracting tourists and customers. In the case of common recipes, GI can be obtained on the ingredients, while on the other hand, GI can be obtained on unique dishes as well. Furthermore, GI labels can improve the buyer's readiness to spend more money to purchase regionally protected products.¹¹ GI registration standards also help maintain the quality of the respective food products.¹²

TRADE SECRETS:

To ensure protection against unfair competition as given under **Article-10bis of the Paris Convention, Article-39 of the TRIPS Agreement** states that 'undisclosed information' or 'trade secrets' can be protected from unauthorized acquisition, use or disclosure which is against honest commercial practices. For information to qualify as a 'trade secret', it must satisfy the three requirements: 1) the information is commercially valuable due to being a secret, 2) it is only known to a limited group of persons, and 3) the rightful holder of the information has taken reasonable steps to keep it secret such as signing non-disclosure agreements, etc.¹³ Various information, such as a list of clients and suppliers, manufacturing process details, etc., can be protected under trade secrets. Although India does not have dedicated legislation to deal with trade secrets, the courts have extended protection to trade secrets through the development

⁸ Government of UK, 'Vale of Evesham Asparagus' (*GOVERNMENT OF UK*) <<https://www.gov.uk/protected-food-drink-names/vale-of-evasham-asparagus>> accessed 10 October 2022

⁹ Trevor Jonas Benson, 'The Routledge Handbook Of Gastronomic Tourism' [2021] Routledge International

¹⁰ BYJU'S, 'List of Geographical Indications [GI Tags] in India' (*BYJU'S*) <<https://byjus.com/free-ias-prep/geographical-indication-tags-in-india/>> accessed 10 October 2022

¹¹ Rasmi (n 5).

¹² Rasmi (n 5).

¹³ WIPO, 'Trade Secrets' (*WIPO*) <<https://www.wipo.int/trademarks/en/>> accessed 10 October 2022

of common law.¹⁴ In Gastronomic Tourism, trade secrets can be used to protect secret recipes from cooking certain dishes, the method of production of certain ingredients, the list of suppliers of certain raw materials, etc.¹⁵ For instance, the secret recipe of KFC fried chicken¹⁶, the formula of Coca-Cola¹⁷, the composition of Angostura Liquor¹⁸, etc., are protected under trade secrets.

But Gastronomic Tourism mainly capitalizes on the traditional culinary knowledge of a particular region as the customers and tourists are attracted to experience the authentic and traditional delicacies of the area. The basic method of preparing these traditional food items, such as the South Indian food 'Idly', might be public knowledge. In *Bimbo Bakeries' case*¹⁹, the US Court of Appeals ruled that though the procedure for making English muffins is public knowledge, the owner's method of making the muffin was unique and qualified as a trade secret. The court also provided an injunction against the former executive from being employed in the competitor company. Therefore, though the basic method of preparation of traditional delicacies might be public knowledge, it can be protected under trade secrets if it involves unique processing techniques or preparation methods. Protecting intellectual property under trade secrets is also advantageous to the market players in the Gastronomic Tourism Industry, especially the restaurants and MSME manufacturers of traditional food products. This is because trade secrets can be protected indefinitely until the secret is disclosed to the public, which might be more advantageous than registered intellectual property rights like patents, etc., that are limited for a particular duration. But there are considerable challenges in using trade secrets as it can be difficult, time-consuming, and not cost-effective to protect the secret.²⁰ It also raises issues of transparency and concerns regarding food safety as it is related to the food industry.²¹

¹⁴ *Burlington Home Shopping Pvt. Ltd. v Rajnish Chibber* 61 (1995) DLT 6

¹⁵ Giulio Zanetti, 'Promoting the Development of Gastronomic Tourism in Malaysia through IP - Report: IP Analysis' (*WIPO*) <<https://www.wipo.int/ip-development/en/agenda/projects/malaysia.html>> accessed 10 October 2022

¹⁶ *ibid.*

¹⁷ Paul Conley, '5 interesting trade secrets in the food/beverage business' (*FOOD DIVE*, 28 August 2014) <<https://www.fooddive.com/news/5-interesting-trade-secrets-in-the-foodbeverage-business/302142/>> accessed 10 October 2022

¹⁸ WIPO, 'A Secret from the Caribbean' (*WIPO*) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=5553>> accessed 10 October 2022

¹⁹ *Bimbo Bakeries USA, Inc. v Botticella* 613 F.3d 102 (2010)

²⁰ Béatrice Martinet, 'Intellectual Property Protection in the Food Industry' (*FOOD SAFETY MAGAZINE*, 1 December 2020) <<https://www.food-safety.com/articles/6872-intellectual-property-protection-in-the-food-industry>> accessed 10 October 2022

²¹ *ibid.*

COPYRIGHTS:

Copyrights are a type of intellectual property rights provided to the creators of literary, artistic, dramatic, and musical works and producers of cinematographic films and sound recordings by the law.²² There are two prerequisites for the work to be copyrightable under the law, which are the originality of the work and the fixation of the work in a material form. Therefore, if these two prerequisites are satisfied, the original work of the people in the artistic form or literary form can be protected under copyright law. **Section 3(1) of the UK Copyright, Designs and Patent Act 1988 ('CDPA')** defines '*literary work*' as any work other than dramatic or musical work which is written, spoken or sung. **Section 2(c) of the Indian Copyrights Act, 1957 ('ICA')** defines an '*artistic work*' as a painting, a drawing, or a photograph, even if such work does not possess artistic quality and any other work of artistic craftsmanship.

While considering Gastronomic Tourism, the various things such as menu cards of restaurants like the traditional restaurants popular for gourmet tourism in a particular region, the culinary tourism brochures, recipe books, etc., can be protected under copyrights. This is because these entities will come within the ambit of literary or artistic work as they consist of works in written form and might include pictorial representations. These works are also fixed in a tangible form which satisfies one of the prerequisites of copyrights. But in order to be copyrightable, these works have to fulfil the criteria of originality, where the work should not be too commonplace or abstract. According to the court in *the Feist Publications case*²³, the copyrightable work should possess some '**modicum of creativity**' as a mere selection of data or facts is not copyrightable, which struck down the 'Sweat of the Brow' Doctrine. Additionally, in the *CCH Canada case*²⁴, the court explained that a work need not be novel or unique but there should be some **exercise of skill and judgement** which is not trivial in the expression of the idea.

The application of these doctrines in relation to recipe books was seen in *Publications International Ltd v. Meredith Corp*²⁵ where it was held that the cookbook cannot be copyrighted as it did not satisfy the modicum of creativity doctrine. But the court in *Barbour*

²² Government of India, 'A Hand Book of Copyright Law' (*COPYRIGHT.GOV*) <<https://copyright.gov.in/documents/handbook.html#:~:text=What%20is%20the%20scope%20of,expressions%20and%20not%20the%20ideas>> accessed 10 October 2022

²³ *Feist Publications, Inc., v Rural Telephone Service Company* 499 US 340 (1991)

²⁴ *CCH Canadian v Law Society of Upper Canada* [2004] 1 SCR 339

²⁵ *Publications International, Ltd. v Meredith Corp* 88 F.3d 473 (7th Cor. 1996)

*v. Head*²⁶ stated that the recipes were copyrightable as they had creative commentary, which was original literary expressions. So, if the menu cards or the recipe books merely contain the names of the dishes or instructions, which is too commonplace or mere facts, then they would not qualify as work which can be protected under copyrights. But if they possess some modicum of creativity or exercise of skill and judgement by the addition of suitable pictures, snippets on the use or functions of the dishes, etc., then these works can be copyrighted.

Another important aspect to be considered while dealing with recipe books, menu cards, etc. or traditional culinary knowledge in general, is the **Idea-Expression Dichotomy** which means that ideas cannot be copyrighted, but only the expression of such ideas can be protected under copyrights. Since traditional culinary knowledge is in the form of ideas, they are not copyrightable per se. Furthermore, though ICA protects unpublished Indian work under Section-31A, the traditional knowledge including culinary knowledge does not qualify for the test of originality and fixation. Based on the idea-expression dichotomy, the court in *Baker v. Selden*²⁷ held that there is a difference between the book and the art illustrated in the book. Therefore, copyrights apply only to the content of the literary work and do not cover the art that was intended to be illustrated by the work.²⁸

While analyzing this notion based on recipe books, the copyrights do not protect the recipes or content of recipes in the book but will only cover the original way in which it is expressed in the form of a recipe book. So, the use of copyrights can only prevent the other market players or competitors from copying the entire menu layout, brochures or recipe books but it cannot restrict them from making the recipes per se. This shows that the application of copyrights in Gastronomic Tourism is limited, but it can still protect against the misappropriation of the works and promote the rights of the market actors.

Food-Plating:

One of the controversial questions about copyrights in Gastronomic Tourism is whether copyright protection can also be extended to a specific form of food plating. This technique consists of making an artistic presentation of the food to enhance its value.²⁹ So, to claim

²⁶ *Barbour v Head* 178 F. Supp. 2d 758 (SD Tex. 2001)

²⁷ *Baker v Selden* 101 U.S. 99 (1879)

²⁸ *ibid.*

²⁹ Internet, 'Is the 'Art' of Food Plating Copyrightable' (*INTEPAT*, 12 December 2021)

<<https://www.intepat.com/blog/copyright/is-the-art-of-food-plating->

copyright protection, food-plating should come under artistic work (Section-13(1)(a) of ICA) as defined by Section-2(c) of ICA and satisfy the prerequisites of originality and fixation. Firstly, Food-Plating involves high precision, culinary skills, creativity, and labour to present the dish in an aesthetic and visually appealing manner which requires special training, skill and knowledge for its production.³⁰ Therefore, food-plating is a work of ‘artistic craftsmanship’ under Section-2(c)(iii) of ICA and, therefore, will be an artistic work.

Secondly, the food plating and sculpture will be original if it possesses some **modicum of creativity**³¹ and is created using the **exercise of skill and judgement**³² of the chef. But in many cases, the culinary plating is based on inspirations sourced from others' work and, therefore, can be derivative.³³ The Indian Courts in *EBC v. DB Modak*³⁴ laid down that the derivative works should have substantial variation and the standard is of ‘**minimum level of creativity**’. So, by applying this standard, derivative food plating without originality can be excluded while also giving due recognition to the chefs in cases of original food plating. Thirdly, though food-plating is expressed in a tangible form, the dish is perishable or can be consumed, which raises the question of ‘fixation’. The US court in the *Kim Seng Company case*³⁵ held that the arrangement of ‘food in bowl’ as a sculpture was created using perishable food and cannot be copyrighted as it lacked fixation, and the bowl depicting traditional Vietnamese dish lacked originality as it was public knowledge. But this definition of ‘fixation’ is based on US Copyright Regime.

For instance, ‘fixation’ has not been defined in an equivalent narrow understanding in the Indian Jurisprudence. So, if positively interpreted by the judiciary, copyright protection can extend to food-plating in the relevant jurisdictions. This can help in improving the Gastronomic Tourism in those regions as it might encourage interested customers to seek out such restaurants, museums and culinary places for their unique food sculpture and plating, such as

copyrightable/#:~:text=The%20quick%20analysis%20reveals%20that,as%20writers%20of%20other%20works
> accessed 10 October 2022

³⁰ Aprajita Nigam and Viksit Singh, ‘The Scrumptious Art– IP Protection to Food Plating Styles’ (*MONDAQ*, 10 March 2018) <<https://www.mondaq.com/india/trademark/680984/the-scrumptious-art-ip-protection-to-food-plating-styles>> accessed 10 October 2022

³¹ *Feist Publications, Inc., v Rural Telephone Service Company* 499 US 340 (1991)

³² *CCH Canadian v Law Society of Upper Canada* [2004] 1 SCR 339

³³ Aatmik Jain, ‘Does Copyright Law Protect Presentation of Gastronomic Creations?’ (*SpicyIP*, 6 August 2020) <<https://spicyip.com/2020/08/does-copyright-law-protect-presentation-of-gastronomic-creations.html>> accessed 10 October 2022

³⁴ *Eastern Book Company v DB Modak* (2008) 1 SCC 1

³⁵ *Kim Seng Company v J&A Importers, Inc.* 810 F. Supp. 2d 1046 (C.D. Cal. 2011)

New York's Museum of Food and Drink and Chicago's Foodseum. Another example is that the visitors can spectate artistically plated Chinese dishes at the Food Museum in Hangzhou, China.³⁶ So, allowing copyright protection to food plating can prevent the misappropriation of artistic assets in such museums and promote tourism.

TRADEMARKS:

Article 16.1 of the TRIPS Agreement gives the exclusive right to the owner of a registered trademark to prevent third parties from using identical/similar signs for goods and services that can result in a likelihood of confusion. These signs differentiate the products or services of a company from the competitors and can protect products, shapes, logos, slogans, etc. In Gastronomic Tourism Industry, trademarks can be used to protect the names of dishes or ingredients, names of restaurants and their logos, names and logos of other market actors such as distribution channels and food festivals, slogans, taglines, the shape of foods, etc. which can promote the brand to the tourists.³⁷ But the issue in these cases is that the signs should comply with the domestic legal requirements to be given trademark protection. For instance, **Section 9 of the Indian Trademarks Act, 1999** lays down the grounds for refusal of trademark registration such as when the mark is of the nature to deceive the public and cause confusion, devoid of any distinctive character, etc. Therefore, if the culinary dishes or their ingredients have common/generic names, such names cannot be granted trademarks. For instance, the Indian dish 'Dal Makhani' cannot be granted a trademark as it does not possess any distinctive character. But by adding distinctive terms and elements, the mark can be registered as a trademark. For example, Nasi Lemak is a popular Malaysian traditional dish and therefore, its name cannot be registered as a trademark because it is generic. But the term 'Nasi Lemak Saleha', along with a logo/image, was registered as a complex trademark under the Malaysian Trademark Act 2019.

Collective Marks:

Collective marks are similar to normal trademarks but belong to a consortium or association of individuals rather than a single person/company, which is also defined under **Section 2 (1)(g) of the Indian Trademarks Act, 1999**. Therefore, producers of traditional culinary dishes and

³⁶ Natasha Reed, 'Eat Your Art Out: Intellectual Property Protection for Food' (*TRADEMARK AND COPYRIGHT LAW BLOG*, 21 June 2016) <<https://www.trademarkandcopyrightlawblog.com/2016/06/eat-your-art-out-intellectual-property-protection-for-food/>> accessed 10 October 2022

³⁷ Zanetti (n 15).

related products can consider forming associations and adopting collective marks instead of individual trademarks. This can help in establishing certain standards regarding the nature, quality, etc., of the products produced, reduce production costs, and increase the competitive edge of regional products in the national markets.³⁸ For example, one of the main ingredients for preparing the traditional Peruvian dish 'Cabrito' is goat's meat which is usually only bought in regional festivals and limited places. Some of the associations, such as 'Asociación Unidad Productiva Don Tomás' owning the collective mark 'Asprodont', regulate this product's supply, which helps maintain its quality and competitive edge. Collective marks have also proved useful in preserving culinary utensils. A molcajete is a traditional utensil generally used to make salsas in Mexican cuisine. An association consisting of 20 artisans making molcajetes using traditional methods having a close connection to their town of Comonfort registered a collective mark "MCG Molcajetes de Comonfort, Guanajuato" under their association. This collective mark contributed to recognizing molcajete as a product exclusive to Comonfort which promoted its cultural heritage and enhanced its gastronomy touristic value.³⁹

Certification Marks:

Certification marks are signs which indicate that a product is manufactured or created in compliance with particular standards⁴⁰ and it is defined under **Section-2(1)(e) of Indian Trademarks Act, 1999**. In Gastronomic Tourism, these marks are helpful in ascertaining the standards of the culinary products and ensure food safety, which can influence customers' buying behaviour. There are various certification marks for food and culinary products used in India such as AGMARK for agricultural products, FPO marks for processed fruit products, etc. Certification marks can also be issued by third parties who propose to be registered as the proprietor for such marks. For example, 'Feast OnTM – Certified Taste of Ontario' is a certification mark issued by 'The Culinary Tourism Alliance'.⁴¹ This mark is issued to restaurants of all ranges, which verifies the commitment of restaurants to source local Ontario food and market them to the customers.⁴² This can help in marketing the certified restaurants to tourists interested in experiencing local and authentic Ontario food, which contributes to differentiate Ontario from other culinary places and promoting it as a gastronomic tourist

³⁸ Luis Alonso García Muñoz Nájara, 'Intellectual Property and Culinary Traditions in Peru' (*WIPO*) <<https://www.wipo.int/ip-development/en/agenda/projects/peru.html>> accessed 10 October 2022

³⁹ *ibid.*

⁴⁰ Rasmi (n 5).

⁴¹ Culinary Tourism Alliance, 'ABOUT FEAST ON®' (*CULINARY TOURISM ALLIANCE*)

<<https://ontarioculinary.com/feast-on/about/>> accessed 10 October 2022

⁴² *ibid.*

destination. However, setting up bodies to issue certification marks will require considerable resources, skills, and cooperation between different actors in the regional Gastronomic Tourism Industry, which might hinder the implementation of this mark in different regions of the world.

Trade Dress:

Under Trademarks Law, Trade dress can protect the various features of the visual appearance of a good/product. Therefore, the presentation of food and food plating can also be covered under the ambit of 'trade dress'. In the case of *N.Y. Pizzeria, Inc. v. Syal*⁴³, the court deliberated on a trade-dress infringement claim on plating methods where it concluded that food-plating could be covered under trade dress if it is distinctive and the party proves that there is a likelihood of confusion. But proving that the food plating is distinctive and that there is an infringement of the food plating due to the likelihood of confusion can be difficult most of the time.

CONCLUSION AND WAY FORWARD:

Though there is a huge potential to utilize different IP tools in the Gastronomic Tourism Sector to promote and enhance tourism, various challenges are associated with implementing these IP tools. For instance, collective and certification marks can serve as useful methods to improve customer reliability and visibility and attract gastronomic tourists to the region. But the successful implementation of these marks requires considerable funds, effort, and time along with cooperation from different market players such as restaurants. Furthermore, in many cases, the names and methods of preparation of the culinary dishes are widely known or part of traditional knowledge which can hamper their chances of being granted trademarks. There is also a lacuna or a lack of clarity on Gastronomic Tourism matters in the domestic legal framework of countries like India, especially regarding unconventional areas like food plating. But despite these barriers in the implementation of IP tools in the Gastronomic Tourism Sector, the application of IP tools can enhance the branding of the region as a culinary tourism destination which can promote Gastronomic Tourism in the long run. The usage of these tools can also greatly help in the advertisement and marketing of culinary products in different regions, improve their visibility and reliability to global customers, attract more tourists and serve as a means to promote business opportunities in the Gastronomic Tourism Sector.

⁴³ *N.Y. Pizzeria, Inc. v Syal* 53 F. Supp. 3d 962 (SD Tex. 2014)