

---

# PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN FOOD INDUSTRY IN INDIA

---

Yadharthana K & Parkkavi E, SASTRA Deemed to be University, Thanjavur

## ABSTRACT

In the food industry, intellectual property rights (IPR) are essential for safeguarding innovations in food products, recipes, procedures, and branding. IPR tools like trademarks, copyrights, trade secrets, and patents let businesses protect their unique formulas, manufacturing processes, and brand identities. Increased competition in the market has compelled businesses to protect their IPRs to avoid such competition. This paper discusses how these IPRs are protected in India and why they should be protected. Recently Social media plays a significant role, this paper also analyzes how IPRs are misused in the food industry and what are legal remedies available for them.

This research paper is based on qualitative research and secondary data is used for the collection of information. This paper also analyzes the awareness of intellectual property in the food industry among small-scale industries and discusses on government initiatives to raise awareness on small industries and further analyzes why there is a need for IPR protection in the small-scale food industry. How does this IPR help the industry to protect its products, recipes, and procedures? What is the legislation that governs these IPRs in India? And also analyzes whether IPR makes food products more expensive. Does it affect consumer trust? Since there are many cases where IPRs in the food industries are misappropriated, this paper also gives recent case studies on the misuse of IPRs in the food industry. This paper also discusses both internal and external challenges faced by the industries. This paper concludes by discussing the findings and giving recommendations and suggestions on the protection of IPRs in the food industry.

**Keywords:** Intellectual property, Food industry, Small-scale food industry, Challenges, Government initiatives.

## Introduction

One of the most important sectors in the world is the food industry. The food business employs about 10% of the workforce overall. Sales in the food industry total USD 1.4 trillion. In this large economic sector, many food industries have their own unique recipes, products, tastes, marketing strategies, packaging ideas, etc. and they also invest time and money to improve their ideas to get consumer attention. Protection of their unique ideas may differentiate them from other industries. These ideas are protected by IP rights, includes trade secrets, copyrights, trademarks, and patents<sup>1</sup>. This effective IP protection allows them to enjoy profits from their ideas and also build customer trust.

IP protection helps companies avoid legal disputes by identifying ownership and rights explicitly, limiting unlawful use, and simplifying agreements. Because of its clarity, there is less conflict and greater support for controlling possible infringements and enforcing rights. Companies also face many challenges in such protection. Though there are some intellectual properties, trade secrets play a major role in the food industry. Many companies keep their recipe confidential which makes them unique and avoid competition among others. Therefore IP protection in the food industry allows the companies to achieve a greater level without any competition among others. As this IP in the food industry is essential, this paper discusses how it is helpful and the challenges in protecting it.

## Literature review

**Béatrice Martinet Esq**, discusses Intellectual property protection in the food industry, further discusses the challenges faced by food industries and also how they can protect their distinctive features and advice to obtain intellectual property protection on shape, color, and unusual features it helps them from becoming generic.

**Mr. Saurabh Tripathi (2023)**, mentions that if the food industries are gone with the correct kind of intellectual property portfolio management then it reaches heights of success. Found that industries should first take into account their products and consumers and then invest in the intellectual creation of new and attractive ones.<sup>2</sup>

---

<sup>1</sup> Essense obhan, & Sanndhini Mahapatra. (2024a, January 30). Food for thought: IP protection in the Indian Food Industry. Obhan & Associates. <https://www.obhanandassociates.com/blog/food-for-thought-ip-protection-in-the-indian-food-industry/#:~:text=Food%20can%20be%20protected%20in,secrets%2C%20patents%2C%20and%20copyright>

<sup>2</sup> Tripathi, Mr. S. (2023, December 6). Regulatory compliance and IPR in food processing and manufacturing - aishwarya sandeep- parenting and law. Aishwarya Sandeep- Parenting and Law - Simplifying Law for Common

**Vishal B Banne**, In this paper the doctrinal research method was used. It discusses intellectual property and food security, how this IP protection was developed, and the legal framework in food industries.

**Essense Obhan and Sannidhi Mahapatra**, this paper is about intellectual property protection in the Indian food industry and discusses different types of IP protection through recent case studies. States that lack of effective protection may affect the goodwill of the industries by counterfeiters and copycats. Thus industries should be proactive in protecting their intellectual property.

**Dinesh Parmar 2024**, this website discusses types of intellectual property protection and the challenges like counterfeiting and piracy faced by the food industries and also discusses the laws that govern these intellectual property types. Mentions that when it comes to enforcement of such rights it is difficult for the small industries and these issues are addressed by the laws.

### **Research problem**

The lack of intellectual property protection in small-scale food industries and the challenges faced by them both internal and external are studied less.

### **Research objectives**

- To understand how this IP protection helps the food industry to avoid any disputes among others.
- To understand the awareness of intellectual property protection to small industries which helps them to sustain their position.
- To understand the challenges that food industries face in the absence of intellectual property protection.
- To the importance of intellectual property protection to Small-scale food industries.

### **Research questions**

1. Whether intellectual property protection helps the food industry be unique from others?
2. Is there any lack of awareness of intellectual property protection in small-scale food industries?

3. What are the challenges faced by small-scale food industries in not having such intellectual property protection?

### **Research Methodology**

This study paper is based on qualitative research and secondary data is used for the collection of information. The relevant data has been extracted from previously published books, academic papers, newspapers, reports, magazines, journals, and authenticated websites. The goals and design of the study have been established based on the observation of the previously described data collected. This paper also discusses case studies for better understanding.

### **Intellectual property and its legal aspects in food industries:**

#### **Copyright**

Copyright is a legal right given to the original creators for a limited period and it is governed by Indian Copyright Act 1957. As per section 13 of the act, copyright is given to the classes of work as follows, original literary, dramatic, musical, and artistic works, cinematograph films, and sound recording. The word original doesn't mean that it should be original but the work should originate from the author. Section 17 of the copyright act states that the author will be the first owner of the copyright. When it comes to food industries, copyright doesn't protect the articles, ideas, formulas or facts but it is protected when they are made in tangible form. Copyright law protects only if the food incorporates creative features that are separable from the food's utilitarian feature. Many chefs may have ideas in recipes but it is not protected unless it is expressed in tangible form.

Copyright is granted for 60 years in addition to the life of the author. Copyright registration is not mandatory but when a chef makes a derivative food design without any permission which is similar to any copyright-protected food design, it causes a risk of infringement of copyright. Nowadays plating of food has become a popular subject. Some critics recommend that if it gains a sufficient reputation to identify the source of the dish then plating should be protected under trade dress. But some object to it and say, if plating is original then be protected under copyright as an artistic work. Thus it needs clarification from judicial authorities. If any third party copies the recipes of a copyrighted product then it causes infringement and shall be punishable with imprisonment of 6 months which may extend up to 3 years with a fine amount of 50,000 which may extend up to 2 lakhs. If there is a subsequent

infringement of a second conviction then it shall be punishable with imprisonment of 1 year which may extend up to 3 years, with a fine amount of 1 lakh which may extend up to 2 lakhs.

### **Patent**

A patent is a statutory right for an invention granted to a product or process of making a product for 20 years to the patentee by the government. It is governed by the Patent Act 1970. There are three main ingredients for granting a patent: novelty, utility, and non-obvious. First, if a recipe is to be patented then the applicant should prove its novelty, that is the recipe was not available anywhere in the world. Then has to prove that the recipe was not obvious to the person skilled in the art<sup>3</sup>. Therefore the food products or process should pass the NUN test {Novelty, Utility and Non-obviousness} Sections 3 and 4 state about the inventions that are not patentable. In the food industry patents are obtained for the end food products or the process of making such food products. Many food industries look to patent their food products or processes to be unique among others and they enjoy profits with no competitors.

The Ever-Greening process is that the industries try to renew the life of their patented product or process by bringing small creativity to the existing one when the time limit for the patent is reached but it is not allowed as per the patent law. If there is any objection to the grant of a patent to any food product then one can object to it within one year from the date of granting such patent and pre-grant objection can also be raised. If any person infringes the patented food product or process then as per section 108, the food industry can get an injunction to stop such use of others. The food industry felt it was better to obtain a patent for the end food product rather than the process, as the process is alone protected not the food product itself.

### **Trade mark**

Trademarks are governed by the Trade Marks Act, 1999. A trademark is any name, logo, brand, symbol, or design that is legally protected and used to identify the goods or services of an industry from others and they include a combination of colors, packaging, and shape of goods. This helps the customer to distinguish the food products from others and no one uses any other industry's trademark to sell their food products as it creates infringement. For

---

<sup>3</sup> Banne , V. B. (n.d.). Intellectual property rights and food security. Legal Service India - Law, Lawyers and Legal Resources. <https://www.legalserviceindia.com/legal/article-14524-intellectual-property-rights-and-food-security.htm>

instance, Oreo is a trademarked product and it is a well-known brand to customers, no other industry uses the name Oreo to sell their cookies.

Trademark registration is essential to protect the food industry's reach and it also helps in increasing the sale value by creating a name. When the food industry expands internationally then they have to ensure that their trademark has been used already or it can be registered in foreign jurisdiction. Trademark attracts the attention of customers and also help food products stand out in the market. If any person tries to infringe the trade mark then punishable under section 103, imprisonment for a term of 6 months which may extend to 3 years, with a fine amount of 50,000 to 2 lakhs. For subsequent infringement, punished with imprisonment of 1 year to 3 years, with a fine amount of 1 lakh to 2 lakhs.

### **Industrial design**

Design and visual appearance of a product play an important role in modern days as it attracts the customer and draws their attention to buy such a well-designed product from others. Therefore food industries invest their time and money in creating new articles. These designs are governed by the Design Act, 2000. Designs are granted only if it is novel, non-obvious, original, and visible on the finished functional article. It is important to protect designs to avoid infringement. In the food industry designs are seen in the shape of a product or packaging and this protection is granted for ten years and can be renewed for five years.

Registration of a design in the food industry helps to avoid any use of the designed products and if any food product is similar to the designed product then it creates infringement. Any person infringing the design according to section 22, should pay an amount not exceeding 25,000 and a total sum up amount not exceeding 50,000. Therefore the food products should not be new alone but also it should also differ from the existing products to avoid infringements.

### **Trade secrets**

One of the important intellectual property protections in the food industry is trade secrets. Trade secrets are business information that gains value by keeping secrecy and the owner of the trade secret must take necessary measures to protect it. In the food industry, the recipes are kept secret to be seen as unique to customers and it helps in gaining sales value. For example, coca-cola has trade secrets on their recipe.<sup>4</sup> The employees in food industries are required to

---

<sup>4</sup> Esq., B. M. (2020, December 1). Intellectual property protection in the Food Industry. Food Safety RSS. <https://www.food-safety.com/articles/6872-intellectual-property-protection-in-the-food-industry>

sign non-disclosure agreements in order to maintain the secrecy of the recipe. At the initial stage itself, the industry decides who would own the trade secrets. Trade secrets protection is very powerful and can last indefinitely if the recipes are kept confidential and not communicated to others. In the modern era, it is difficult to keep the recipe confidential as social media plays a significant role and it is likely to be misused. Therefore to avoid this, industries should have non-disclosure agreements to protect their trade secrets.

### **Challenges faced by Small-scale food Industries:**

Lack of awareness on intellectual property protection in small food industries<sup>5</sup> doesn't get legal protection under above-mentioned legislations and they often face legal and social challenges both internal and external as discussed below.

#### **Infringement**

Small-scale food industries are unaware of intellectual property rights, they may inadvertently infringe the intellectual property of other food industries. For example they may use any trademarked name, slogan or logo or patented food products, process of making food products or copyrighted packaging designs, recipes which results in legal disputes including fines, injunction or product recall. This infringement made by them affects their business operations and the reputation as well. Therefore awareness on intellectual property among small-scale food industries are important to avoid such risks.

#### **Counterfeiting**

It refers to the production of counterfeit goods and they appear as genuine products. In the food industry, falsified labels are often made to distract the consumer and buy their food products. For example - basmati rice is often counterfeited with cheaper rice. The small-scale food industry often faces this challenge and it also breaks the customer's trust which leads to a drastic decline in the marketing of food products. Example - of Small-scale industries may have a good reputation among consumers but when its products are counterfeited it faces decline in marketing. Counterfeiting food products leads to customer health risks as sometimes local products are sold. Therefore small-scale food industries face financial losses by a reduction in sales because of frauds made by others.<sup>6</sup> Many food industries invest time and money to make

---

<sup>5</sup> Hemanth Kumar MS1 and Dr. HH. Ramesha2 (2024) International Journal of Current Science Research and Review, 7(6 June 2024).

<sup>6</sup> Dinesh Parmar. (2024, June 25). IP rights protection for Food Industry in India. Parker & Parker. <https://www.parkerip.com/blog/ip-rights-protection-for-food-industry-in-india/>

the customer aware of their products compared to others.

### **Impact of unawareness**

Many food industries are aware of different intellectual property protections. Lack of this results in unprotected innovations where many industries copy the recipes, process, and branding from it. This makes the food industry not unique from others as the same was copied by many other industries. This was often seen in small-scale food industries as most of them are unaware of IP protection. Sometimes small industries' recipes are copied and obtain protection by any other industry which leads not to the production of their products itself as it creates infringement. Therefore, the protection of innovation is important in the Small-scale food industry. Unawareness of IP protection makes industries face loss as many industries counterfeit their own recipes etc.

### **Disclosure of confidentiality**

Small-scale food industries face challenges among their employees or workers. In many cases, their employees often disclose their confidential information or secrets which creates a drastic loss to those industries and harms the brand reputations. Some employees may intentionally disclose for their personal benefit but some disclose unintentionally because of any carelessness or poor data management. If the secret recipe was leaked then the competitive industries copy it and try to bring similar products and it also damages the reputation by affecting the consumer's trust. To address this issue the small-scale food industries should have non-disclosure agreements signed by all its employees to ensure nothing has been disclosed and should give training and establish clear policies for their employees about confidentiality.

### **Enforcement challenge**

Enforcement is a challenge faced by the food industries, especially in litigation which is a very lengthy one. Regulatory agencies often fail to check the IP-protected products in small industries because of a lack of staffing and funding and they always focus on large industries alone and the small ones are kept unchecked.<sup>7</sup> In some cases the authorities allow industry to use the other industry's protected products by getting personal benefits. When the food product crosses borders it faces jurisdictional challenges and there is a lack of international cooperation. Technology advancement creates loopholes where the infringer exploits like selling fake

---

<sup>7</sup> Dinesh Parmar. (2024, June 25). IP rights protection for Food Industry in India. Parker & Parker. <https://www.parkerip.com/blog/ip-rights-protection-for-food-industry-in-india/>

products. The consumers also go with the cheaper products without looking into their quality.

**Findings and analysis:**

Intellectual property protection helps the food industries be seen as unique by the customer and it helps the people use a qualified product that avoids any health issues like side effects. Often small food industries are unaware of intellectual property which makes other food industries copy their recipes, products, and processes and they also obtain protection under the statutes which makes a full stop to the small industries using their own recipes, etc. as it creates infringement. Therefore small industries should be aware of IPR protection. The intellectual property of the food industries is misused by the infringer like selling local products under a popular brand creates customer confusion in recognizing the original brand, and this breaks consumer trust and remedies are available for such infringement in statutes, thus the industries claim damages from the infringer. But the Small-scale industries didn't get remedies as they didn't obtain any legal protection under the legislation.

When any food products are protected by intellectual property it also adds value to it and customers think it is too expensive and they have no other option to get similar food products. However, the food industries enjoy this intellectual property protection but they also face some challenges both internal and external. For instance, their employees disclose confidential information about their industry for any personal benefit. To avoid this industries should have non-disclosure agreements between their employees which allows them to maintain their trade secrets and any confidentiality. Most of the food industries use trade secrets and patents for processes and products which they think of as a better protection. Designs and trademarks are used to grab the attention of the customers to buy their products.

Intellectual property registration is not mandatory but if it is not registered then can't claim legal protection when there is any misuse or infringement by any other industries. Therefore registration is important for claiming protection. The food industries face many challenges when it comes to the modern era. Social media plays a major role, it is likely to disclose any confidentiality and it also creates sales of local products by branding it as a popular product to the customer. This reduces the customer's trust over a popular brand and the industries face a drastic decline. Therefore food industries invest time and money to work on their products and also give awareness to their customers in identifying their products. It was found that many people in society and small industries are unaware of intellectual property

protection. Therefore efforts have to be taken to provide awareness on IP protection which helps the Small-scale food industries the way to success.

### **Government initiatives on awareness:**

Government has taken initiatives to raise awareness on intellectual property to MSMEs, our paper discusses some initiatives as follows.

### **Intellectual Property Facilitation Centres**

The objective of the IPFC is to raise awareness to MSMEs on IP and to protect their IP. It also provides for special training, advisory services through IP experts, agents. Provide assistance in drafting and preparation of IPR application and filing for registration to clients. It conducts both short and long-term training for MSMEs, students, professors, and scholars where they give a general awareness to protect their intellectual property.

### **IPR Awareness Programmes by the Ministry of MSME**

The Intellectual Property Facilitation Centre (IPFC) of Federation of Indian Micro and Small & Medium Enterprises (FISME) along with the support of the (CGPDTM) Controller General of Patents, Designs & TradeMarks, Ministry of Commerce & India, Government of India organized an awareness programme for two days. On the first day the objective of the programme is to raise a general awareness on Intellectual property and the need of MSMEs to protect their IP. On the second day, the participants include students, professors and scholars. They all were given insights on various IP instruments and special emphasis on patents and designs.

### **National Intellectual Property Awareness Mission (NIPAM)**

This mission provides awareness on intellectual property rights to one million students and it aims to inspire the students to create innovations and protect them. Sh Jain explained about how intellectual property rights is an essential tool for the IP holder to become a Job giver rather than the job seeker. Sh. Rajendra Ratnoo encouraged the CGPDTM officers to raise awareness on intellectual property in order to create a more conducive environment for creativity and innovation in the country.

### **Intellectual Property Rights Scheme**

It was launched by the Ministry of Micro, Small and Medium Enterprises which offers legal, IP filing support and also provides IP consultation, advisory, Technology gap analyses,

Patentability search and IP commercialisation through the establishment of (IPFCs) Intellectual property Facilitation Centres across the country. The main objective of this programme is to enhance the awareness among MSMEs about IP protection and to take suitable measures for the protection of technological innovations, ideas by the MSMEs.

Many steps have been taken by the government to provide awareness to MSMEs about IP protections but still many small-scale food industries are unaware of IP rights and they face many challenges, therefore our paper addresses some recommendations for providing awareness to small-scale food industries on IPR.

### **Case studies:**

#### **Coca-Cola Company V. Bisleri International Pvt ltd**

The plaintiff claimed that through agreement they acquired rights to the Maaza trademark but the defendant was using this Maaza trademark without authorization including registering and selling the same in Turkey. The court held in favor of the plaintiff by passing a permanent injunction to the Bisleri and confirming the rights of Coca-Cola with regard to the Maaza trademark<sup>8</sup>.

#### **Starbucks Corporation V. Sardarbuksh coffee & co**

In 2001, Starbucks filed for trademark protection in India for its wordmark "STARBUCKS" and related logo. Sardarbuksh Coffee & Co.' Sardarbuksh's logo was the turban commander's face having wavy lines on the sides surrounded by a circular black band. In 2017, Plaintiff demanded in writing that the Defendants alter their logo. The Defendant merely altered the color scheme to black and yellow in response and carried on with business as usual. In May 2018, the Defendant started conducting business under the same name. Comparable products and services are offered by the Plaintiff and Defendant. Because of the above-mentioned incidents, the plaintiff brought a lawsuit against Sardarbuksh in the Hon'ble High Court of Delhi. The plaintiff sued the defendant for infringing the trademark. Held that the ordinary intelligence of a man may be used by confusion and thus it was deceptively similar.<sup>9</sup>

---

<sup>8</sup> The Coca-Cola Company vs Bisleri International Pvt. Ltd (Inidan kanoon October 2009).

<sup>9</sup> Devi, K. (2024, January 5). Case analysis: Starbucks Coffee vs Sardarbuksh Coffee and Co. ORs. Jus Scriptum. <https://www.juscriptumlaw.com/post/case-analysis-starbucks-coffee-vs-sardarbuksh-coffee-and-co-ors>

## **Mondelez India Foods Pvt Ltd V. Neeraj Food Products**

The defendant launched a James bond chocolate product which is similar to the plaintiff Gems chocolate product and sold it with a similar package and contended that the defendant was creating confusion to the customers in buying the product. The court ruled in favor of the plaintiff by passing a permanent injunction and also awarded the plaintiff damages.<sup>10</sup>

### **Recommendations and Suggestions:**

**Independent IP advisory body** - Establish independent IP advisory body at state and local level to provide awareness, legal guidance and support small-scale food industries on intellectual property matters to avoid issues often faced by them.

**Awareness programs** - Develop programs like IPR Schemes to raise awareness among small-scale food industry operators about the importance of intellectual property protection, including practical advice on how to protect trademarks, patents, trade secrets, and product designs to improve competitiveness and prevent unauthorized use of their innovations.

**Raise Awareness of Global IP Protection** - Educate small-scale food industries on the necessity of international intellectual property protection, particularly for industries that engage in export activities, to secure their products in other markets and avoid any infringements.

### **Conclusion**

The food industry is an important sector in the world and their recipes, designs are to be protected to achieve their goals. Registration is important to claim damages from the infringers, in the case of unregistered trademark common law provides for passing off. The Small food industries should take up correct IP protection to reach new heights of success and they should be made aware of intellectual property rights. To expand their brand products, they must first look into the customer's needs and wants. Therefore industries should invest their time to bring creativity to their products which satisfies the customer. Intellectual property protection is important in food industries to be unique from others which leads in achieving their goals.

---

<sup>10</sup> Manupatra. (n.d.). Articles – Manupatra. <https://articles.manupatra.com/article-details/Case-Analysis-of-Mondelez-India-Foods-Pvt-Ltd-V-Neeraj-Food-Products-Cadburys-Gems-Vs-James-Bond>

**REFERENCES:**

<https://aishwaryasandeep.in/regulatory-compliance-and-ipr-in-food-processing-and-manufacturing/>

<https://www.obhanandassociates.com/blog/food-for-thought-ip-protection-in-the-indian-food-industry/#:~:text=Food%20can%20be%20protected%20in,secrets%2C%20patents%2C%20and%20copyright>

<https://www.parkerip.com/blog/ip-rights-protection-for-food-industry-in-india/>

<https://www.food-safety.com/articles/6872-intellectual-property-protection-in-the-food-industry>

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.parkerip.com/blog/ip-rights-protection-for-food-industry-in-india/&ved=2ahUKEwj6ysaFlcWJAxUTTGwGHYuQOzIQFnoECCEQAQ&usg=AOvVaw0Bdw7e8-Ii1GPvr9DSFWMH>

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.legalserviceindia.com/legal/article-14524-intellectual-property-rights-and-food-security.html&ved=2ahUKEwizoca7lcWJAxXYVmwGHTxKO0w4ChAWegQIEBAB&usg=AOvVaw0Lh2dZLpaCvBOY9zh-hVZY>