Patent and Copyright Attorney Michael H. Smith - Secret Family Recipes May Not be so Secret

November 26, 2019

The Oklahoman

https://oklahoman.com/article/5648181/secret-family-recipes-may-not-be-so-secret

It may be Grandma's secret pecan pie or Uncle Bill's cranberry fluff. Every family has one. That relative who claims to have the old family secret recipe. But in the age of Instagram foodies and social media celebrity chefs, is Granny's recipe really so secret anymore? And can you protect it? Oklahoma City Patent Attorney Michael H. Smith explains the secret sauce of protecting your family recipes.

Q: What is a copyright and can it protect my favorite family recipe?
A: Copyright is a form of property protection afforded by the laws of the United States to the authors of "original works" including literary, dramatic, musical, artistic, audiovisual, sound recordings and architectural works. So you can't copyright a recipe that only contains a list of ingredients. Under copyright law, the list of ingredients and the actual steps that one takes to make a recipe are not protectable as they are mere facts and formulas. Copyright protects the expression of the recipe. This includes a literary description, images, illustrations or other elements along with the list of ingredients and how those ingredients are put together. An example of the expression of a recipe is seen in many cookbooks produced by chefs, celebrities and others.

Q: What steps can I take to copyright the expression of the recipe?
A: The moment the work is created, copyright automatically exists. You can register the expression of the recipe with the U.S. Copyright Office. A copyright registration provides you the ability to have the facts of your copyright on the public record and have a certificate of registration. Also, if you want to bring a lawsuit for infringement, you will have to register.

Q: So, is there any way to protect only the list of ingredients in my recipe?
A: Yes, keep it a secret. If there is economic value to the recipe, as for a business, you may be able to protect your recipe as a trade secret. However, to protect the recipe as a trade secret means that you have to make a reasonable effort to protect the recipe as a secret. Keep the recipe in a secure place. Only show certain people on a need to know basis. Don't let everyone see the recipe. Don't publish the recipe in a cookbook or online. Take care to not tell others when socializing. If others have access to the recipe, the trade secret will no longer be a secret.

Practices

- Intellectual Property