

A STUDY ON THE PROTECTION OF FOOD ART UNDER COPYRIGHT ACT,1957

ASHISH SHARMA¹

¹Research Scholar, Department of Law, Maharshi Dayanand University ,Rohtak, Haryana

Email- ashish09bhardwaj@gmail.com

DR. YOGENDER SINGH²

²Associate Professor, Faculty of Law, Maharshi Dayanand University, Rohtak, Haryana

Email- prof.ysingh@mdurohtak.ac.in

Abstract

It is become the routine activity to dine out in the present time. The people involved in this business of food such as the chef and the restaurant owners are trying to improve the dining experience of the consumers. The chef are considered as the artist who prepare the food with an eye tempting presentations. The process of arrangement of the food by the chef is only done with the help of human intellect. The chef presents their food presentation with the help of colour combinations, placing the food by working for many hours. This process of presentation involves the creativity and the skill of the chef. But in the present time, this skill of presentation needs legal protection. This research paper is trying to examine whether the restaurant owners and the chefs can protect their food creation or the food art under the present copyright law.

Keywords: Food Art, Artistic Work, Copyright, Protection, Indian Law.

Introduction:

In the present world, generally people select their food items only with the look or appearances of the food items, and after that with the help of the smell of the food, and finally they select their food items after eating them . The chefs tries to enhance the experience of their consumers by making their food or dishes in an eye tempting manner as well as by making these food items in an visually appealing manner. There is a uniqueness in the presentation which is made by the chef. This presentation is done in the eye tempting manner so that it becomes unique. Due to the uniqueness of these food items in the area of competition, there is a great importance of the food art in the consumers centric market. This eye tempting presentation is only done with the efforts of the chef who undergo rigourous training and a lot of efforts, labour as well as skills. These presentations as well as creations made by the chef are considered or termed as the food art. The chef makes the presentation or arrangement of the food items with the help of colour combinations placement of the food item by working for many hours. Due to this, the creativity or the Food art needs a legal protection in the present scenario. So that the other competitors cannot use the food pictures as well as the videos related to the food items in the online platforms which includes social media, food, blogging websites. The unauthorised use of food pictures and videos related to food items can result in the stealing of the presentation and the creativity of the chef. As per the provisions of Indian copyright act, 1957, the protection is given to the authors of original work which is the result of their hard work, it cannot be considered as the work of another person. In the same manner, the food art can also be considered as the artistic work like other items and should be given protection under the

copyright law.

When a chef place a food item, it is all about the efforts and skills which makes the food items very creative and eye tempting and also provides a value to the food items. The presentation of the food items can also be compared with the artwork such as drawing of a picture with the help of efforts as well as skill under section 2 (c) (iii) of the copyright act, 1957.

The Indian copyright act has no proper definition regarding the term fixation. But in the case of R.G Anand versus Delux Film Industries, 1978, it was held that the expression , arrangements, manner of any idea may be covered under the copyright protection. If we restrict the copyright protection to the certain objects, then it would prevent various works from the copyright protection which includes hair styles, making of sculptures etc. The food art is considered as a unique presentation of the food items as an expression of the shapes on idea and must be recognised and should be given the copyright protection under the provisions of section 2 (c) (iii) of the copyright act, 1957. This is Research Paper tries to examine whether a restaurant or a chef can protect their food art under the Indian copyright law, and whether plating of dish can be considered as original work of authorship of the chef.

Definition of food Art

The food art is considered as the preparation of the food items with so much perfection and placing them on the plate in an eye tempting manner and after that served to the people in a restaurant to enjoy the quality and taste. A food art can be considered as a piece of artwork when it is made by the chef with the help of colour, combinations, skills, hard work and the presentation. The presentation in such a manner is considered as the food art.

Necessity of food art to be protected under the copyright law

The food at is considered as the presentation of the food items in a tempting manner by the chef, and it should also be protected under the copyright law. The copyright protection is given to the original work which is created by the artist. The artistic work is done by the artist with the help of his, intellectual efforts, skills which makes the creativity very eye tempting. In this way, the chef can be compared with the artist who can also be given protection under the copyright law for the purpose of their creation in the form of the presentation of the food art. Because the food art creation also require the same efforts and skills as compare to the other artistic creations, that's why the food art creations requires the same level of protection as the other artistic works under the copyright act, 1957.

Legality of certain economic rights vested with the chef under Indian copyright law

As we already discussed earlier, the definition of food art and also finds that it will come under the purview of artistic works. As a consequences, we can clearly state that the food art is also comes under the copyright protection. The work must satisfy certain requirements to come under the criteria of copyright protection which are

- 1 Original work of the author
- 2 Original in nature
- 3 Fixed in a tangible form

The Indian copyright act does not mention the clear meaning of originality but the meaning of originality can be interpreted with the various precedents of courts. There are certain other conditions which includes the labour and skill. It means that any work comes under the purview of copyright protection and also can be considered as an original work only if it includes the labour and skill of the author. The copyright protection is given in the cases of the expression of the ideas. So that it is necessary that the work must be fixed in a tangible medium. As per the provisions of United States, the copyright law expressly states that the work has to be in a fixed in a tangible form but the Indian copyright act does not provide any proper definition of fixation. Generally we eat the food just after it is prepared . It means that it is a perishable item and it's presentation cannot be preserved for a long time. But if we simply take a photograph of the food items, then also there is not a effective copyright protection. An effective copyright protection can only be done when the chef or the restaurant itself captures the pictures of the food presentation. If the copyright protection is given only to the fixed objects, then it will prevent the various work from the protection of copyright which includes sand sculptures, make up and hair styles. In the case of Donoghue vs Allied newspaper Ltd, 1937, it was held that the idea per se cannot be protected under the copyright protection because the subject matter of copyright protection includes the expression of the ideas which can be protected under the copyright law. It means the copyright protection covers how the idea is expressed. The copyright protection ensures the safety of the authors work and their creativity. There are also provisions in which the copyright owner has the right to sue any person who infringes the original work of the author or the creator by copying or making commercial gain. There are also provisions related to the compensation to the author for the financial loss caused by the wrongdoer. Section 51 of the copyright act clearly mentions that production of any artistic work without the consent of original owner will be considered as an unauthorised copy. Section 14 of the act has the provisions related to the economic rights of the author, which includes the right to reproduce, and to communicate the work with other people. As per the provisions of section 17 of the act, it is stated that the copyright vest with the original author of the work and the person can be considered as the first owner of the work. In the absence of any written agreement, the owner of magazine and newspaper are presumed to be the first owner of the artistic work. As per the provisions of section 17(c) of the copyright protection act, 1957 it is clearly mentioned that the producer will be the first owner of the copyright. The moral rights which are also called as the reserved rights also remains with the copyright owner even the passing of copyright period .

International conventions in relation to the food art under the protection of copyright law

The artistic work of the author is the result of his hard work, labour, skills , that's why it is the property of the original author. Therefore, it is recommended to all the civilised states that they should give protection to the author of the work with the help of domestic legislations and international treaties. Some of the important conventions entities are discussed here, which are related to the copyright protection.

1. The Berne convention for the protection of literary and artistic works 1886.

The Berne convention was adopted in the year of 1886 for the protection of the rights of the original authors in their literary and artistic works. As per the provisions of this convention, the author of the work has the complete authority to control the use of their work by others. The Berne convention was founded on the three principles which includes national treatment, automatic

protection, and the principle of independence of protection. This convention also deals with the provisions related to the fixation of minimum standards of protection. This convention also has the provisions related to the moral rights which can be claimed by the author for the purpose of his reputation and the honour. The Berne convention left the duty of enforcement to the countries which are the members of this convention. This convention provides the protection of the original work of the author and also advocated that the food artist, chef should also be protected. But the ineffectiveness of this convention caused a serious loss to the artist related to the food art because their food art is not given much importance in this convention.

2. WIPO copyright treaty, 1996

This treaty is considered as a special agreement which deals with the protection of the rights and works of the author on a digital platform. Other than the Berne convention various other economic rights are given to the authors under this treaty. As per the provisions of this treaty, the computer program as well as the compilation of data must be protected as literary work. This treaty also grants the rights related to the distribution, right of rental and the right to communication to the public. As per the provisions of this treaty, it is clearly mentioned that if the chef or restaurant captures the photos of the presentation of their food which is unique in nature also comes under the purview of intellectual creation. Due to this the food artist have the right to sue and various other rights related to the compensation if anyone tries to infringe the creation of the food artist.

3. agreement on trade related related aspects of intellectual property rights, 1995

This agreement is also related to the intellectual properties which recognised the connection between the intellectual property and the trade for the purpose of creation of a common international platform for the purpose of the protection of intellectual properties between various nations. This agreement also provides the very powerful enforcement mechanism which helps the nations in the settlement of the dispute related to the intellectual properties.

Conclusion

The copyright is also a form of intellectual property rights, which deals with the protection of the original and tangible work governed by the Indian copyright act, 1957. Due to this, the food art will come under the artistic and literary work. When the various recipes are published on the websites then they are covered under the copyright protection. In the same manner, if a chef makes a presentation of various food items and publish it on the digital platform through pictures and videos then also it will cover under the purview of copyright protection because these are the ideas and expression of the original work of the chef. The food art creations fulfil all the requirements which are needed by the provisions of copyright act, that's why the food art must be given the copyright protection under the Indian copyright act. In the present era, it is also clear that such kind of artistic works, including the food art are increasing in the society. Due to the development of food art and related artistic works, these particular artistic works must be protected under the copyright regime. It is very hard to get intellectual right protection in the works related to food art but this art should be protected under the copyright act as it fulfils all the requirements of creative works. The copyright protection should be given in a balanced manner for the purpose of protection of the rights of the chef as well as the interest of the society. If there is a balance, then the copyright protection must be given to the food art. The main purpose is to protect unique dishes made by the chef so that the culture of the food art industry will become very safe from

infringements. The protection of food art will also help in the development of various other dishes and leads to more innovations in the industry. The food art industry also requires a better interpretation from the judiciary especially in India. The copyright protection is given to the food art presentations, because it is not only an idea rather it is an expression of idea. In the present time, the presentation of food art fulfils all the requirements of creative and artistic work under the copyright protection but still there is no adequate as well as proper protection is given to the food art.

Suggestions

The study attempts to find out the concrete solutions for the protection of food art at both domestic as well as international level. Some of the important suggestions are as follows

1. The scope of the copyright protection should be extended and the requirement of fixation should be removed so that the food art will be covered under the Indian copyright regime.
2. In the restaurant, the chef should be given royalties because it will be a better solution under the copyright protection.
3. The amendment should be made in the copyright act related to the food art and the rights of the chef.

And effort in this regard should be made so that the beautiful food art and its presentation can be protected under the regime of Indian copyright act, 1957.

Reference

- [1] Adams, M. (2002). The dilution solution: the history and evolution of trademark dilution. DePaul-LCA Journal of Art and Entertainment Law, 12(1), 143-172.
- [2] Adria, F. Blumenthal, H. & Keller, T. (2006), Statement on the 'new cookery', The Guardian.
- [3] Brown, E. (2014). Fixed Perspectives: The Evolving Contours of the Fixation Requirement in Copyright Law, Wash. J. L. Tech. & Arts (10), 17.
- [4] Broussard, J. A. (2008). An Intellectual Property Food Fight: Why Copyright Law Should Embrace Culinary Innovation, VAND. J. ENT. & TECH. L. (10) 691.
- [5] Buccafusco, J. C. (2006), On the Legal Consequences of Sauces: Should Thomas Keller's Recipes Be Per Se Copyrightable? Cardozo Arts & Ent. L.J. (24), 1121.
- [6] Buccafusco, C. & Yellin, J. (2016). Copyright in the Kitchen: Exploring Protection for Recipes and Dishes, Landslide, (9), 44.
- [7] Burger, P. (1988), The Berne Convention: Its History and Its Key Role in the Future, J.L. &Tech. (3), 16.