

World's Best Cup of Coffee

By Reg P. Wydeven
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Earlier this year, my buddy, Phil, organized our office's first annual chili cook-off. Several of us participated by bringing in pots of our own creations. I spent a long time perfecting my 'Reg-etarian' recipe for chili and I thought it was one of my finest batches.

After a blind taste test by all my co-workers, my chili ended up coming in second. I lost to Steve, our firm's resident Italian chef, so I took no shame in taking silver. I'll just have to keep tinkering with the recipe until it's perfected and I win the trophy.

Even if I do perfect my concoction, I won't be able to protect it from copycats. Just ask Norberto Colón Lorenzana.

Lorenzana sued South American Restaurants Corporation (SARCO), the owner of several Church's Chicken franchises, one of which was his former employer, for copyright infringement. He claimed the restaurant stole his chicken sandwich.

Lorenzana started working at a Church's in 1987. While there, he claims he came up with the "Pechu Sandwich," which is "a fried chicken breast patty, lettuce, tomato, American cheese, and garlic mayonnaise on a bun." Lorenzana's suit alleged SARCO infringed on his copyright of the sandwich and sought monetary damages for both the recipe and name of the sandwich.

He lost. Unruffled, Lorenzana appealed to the United States Court of Appeals for the First Circuit in Boston. He lost.

The decision, issued last month, ruled that a recipe doesn't receive copyright protection because it doesn't fall under one of the eight categories that does qualify, namely: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.

So a painting of a chicken sandwich, a song about a chicken sandwich, a movie based on a novel about a chicken sandwich, or even a Broadway musical about a chicken sandwich can be copyrighted, but a chicken sandwich itself cannot.

The Court's decision was written by Chief Judge Jeffrey Howard. He wrote that "A recipe – or any instructions – listing the combination of chicken, lettuce, tomato, cheese, and mayonnaise on a bun to create a sandwich is quite plainly not a copyrightable work."

While movies like 'Star Wars' or novels like 'Jurassic Park' are original, creative works of art, there are only so many ways to make a chicken sandwich. In addition, if I rewrote 'Star Wars' and included myself as a character, it would still be 'Star Wars.' However, the addition of one ingredient to Lorenzana's sandwich, like jalapenos, can completely change the sandwich. That's why recipes don't qualify for copyright protection.

Because recipes aren't protected, companies with popular delicacies keep their recipes under lock and key, such as the formula for Coke, the recipe for Bush's Baked Beans and Colonel Sanders' 11 herbs and spices. In fact, KFC's recipe is so secret, the spices are mixed in different locations in the U.S., to protect the full recipe.

So I sure hope my new-and-improved Reg-etarian chili win's next year's cook-off. Just don't ask me what's in it.

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