
Jon M. Garon
Exclusivity in Retail: the Restaurant Business

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This article is part of a series of book excerpts from The Entrepreneur's Intellectual Property & Business Handbook, which provides the business, strategy, and legal reference guide for start-ups and small businesses.

Since the restaurant business is a highly competitive sector with high risks, a large failure rate, and a product difficult to customize, it seems appropriate that restaurants provide the leading examples in how best to apply trademarks, copyrights, trade secrets, and publicity rights to create relevance and exclusivity as a way to gain market share and financial success.

1. Trademarks and Mascots.

As the introduction to the chapter suggests, McDonald's stands apart as a trailblazer in a number of methods related to trademarks and brands, as well as in process innovation and entrepreneurship. It remains number one in sales volume as well. Starbucks is number two, followed by Subway, KFC, Domino's Pizza, Burger King, and Pizza Hut.

McDonald's created a unique brand by creating iconic images to get its stores noticed. The Golden Arches began as an architectural feature of the stores in the early 1960s. These were neon yellow parabolic arches on each end of the building. In 1968, the company translated the parabolas into an “M” indicative of the company name and adopted the modern graphical design as its trademark. The symbol has become so internationally famous that the only McDonald's arches logo not colored yellow is on the store in Sedona, Arizona. The zoning rules for the city did not permit the bright yellow to interfere with town aesthetic. Instead, the store selected a turquoise color, which has turned the small McDonald's franchise into a tourist destination. Another story often tied to the Golden Arches was the analysis by design consultant Louis Cheskin, who saw in the Golden Arches a graphic evocation of breasts. The rounded parabolic shape of the “M” went from an alphabetical allusion to a Freudian appeal regarding the primal need to be nurtured. Whether the logo has this effect has not been tested.

McDonald's also created a family-friendly clown trademark. The first Ronald McDonald appeared in 1963, played by a young Willard Scott. As a pioneer of character-based marketing, the Ronald McDonald character has kept McDonald's restaurants more visible in advertising than any of its rivals. The character was never allowed to stagnate, but received constant but small modifications to keep him and his companions up to date with the current animation and style. McDonald's ran into legal problems when it redesigned the McDonaldland characters to emulate the popular H.R. Pufnstuf television show. Despite losing a copyright dispute, McDonald's succeeded in keeping the characters fresh and current. In recent years, however, advertising directed to children has been disliked by the public, and Ronald's role in television advertising has largely dropped.

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1 See Sid & Marty Kofft Television Prod., Inc. v. McDonald’s Corp., 562 F.2d 1157 (9th Cir. 1977).
In addition to the athletic Ronald, McDonald's seeks to segment its market with its "I'm lovin' it" marketing campaign, which emphasizes the happening lifestyle of its consumers and the centrality of McDonald's food in their lifestyle. These campaigns highlight the importance of making one's product relevant to the target audience. Every consumer in America knows McDonald's. The goal of the new campaign is to make consumers view eating at McDonald's as part of their lifestyle choice.

Like the "You deserve a break today" campaign of an earlier generation, the focus of the jingle and the imagery emphasizes the relevance of the McDonald's fast-food experience to the consumer. Each ad focuses directly on the need for relevance.

2. **Patents and Technology in Food Distribution.**

Again, McDonald's serves as part of the history lesson on leveraging exclusivity. In this case, the leverage was the intersection of patented inventions and franchise agreements. The launch of the modern McDonald's came from Ray Kroc's initial investment in the exclusive franchise rights to the "Multimixer," a patented five-spindled milkshake maker. The single McDonald's restaurant, owned by Dick and Mac McDonald, was running eight of the Multimixers. Kroc felt he could deliver eight of his Multimixers to each store, so he entered into a franchise agreement with the McDonald brothers to franchise the restaurants. Armed with the rights to the Multimixer and the restaurant, he began opening restaurants, buying out Dick and Mac in 1961, seven years after first selling his Multimixers.

Perhaps the most current example of technology and fast-food can be found in the competing methods of fast-food payment. Sonic restaurants, the leading drive-in restaurant chain, has installed a wireless network of card readers to allow credit card customers to pay at the sign and significantly reduce the time the car hop needs to spend on each transaction. The technology adds efficiency and convenience for the consumer.

3. **Trade Secrets and Special Recipes.**

The special recipe used by KFC (formerly Kentucky Fried Chicken) and the formula used by Coca-Cola for its Coca-Cola Classic have both been mentioned earlier, but both provide classic examples of the importance of trade secrets in the restaurant business. At the more mundane level, the secret recipes held by each chef gives that individual chef his edge in the highly competitive business for supremacy among top-rated restaurants.

Restaurateurs Georges Perrier, owner of Le Bec Fin, and Howard Wean, manager for Steven Starr's restaurants, were quoted during a program for Penn State students: "To be part of the 10 to 15 percent of restaurateurs and chefs who make it through to the first year after opening a restaurant, they said there are five important things you need to have: a concept or a clear positioning statement, a designer, a manager and lastly the chef . . . ." The concept and clear positioning statement focuses the business plan on relevance and efficiency, the manager ensures that there is a significant focus on the task at hand. The designer and the chef are charged with creating the unique and secret food and ambiance that combine to create a restaurant's essence. Through careful and highly secret innovation in these two areas, great restaurants can differentiate themselves from their competitors.

4. **Publicity-Based Businesses and the Great Chef.**

A natural extension of the trade secrets available to the great chefs is the ability to market the chef as a distinct, unique feature. For example, the best-known chef among a broad segment of the public

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today is Gordon Ramsay. He has held as many as 15 Michelin stars, run an eclectic array of restaurants, hosted multiple television shows, and published successful cookbooks.

Each of these ventures is promoted and maintained by the publicity rights in the owner/chef who created the empire. Through the use of his name at each stage of his businesses, Gordon Ramsay has leveraged his presence to open new markets and continue to build the brand.

Gordon Ramsay is certainly not alone. James Beard and Paul Prudhomme pioneered the business model. In recent years they have been eclipsed by Bobby Flay, Rachael Ray, Paula Deen and others. They built many restaurants and world class reputations as chefs, cookbook authors, and industry leaders.

Julia Child was perhaps known in more homes at the height of her success, though she did not extend her fame to as many businesses. Emeril Lagasse of Emeril’s Restaurant followed in Child’s footsteps, as have many of the stars of the Cooking Channel. These television stars combine their skills with their personality to reach out to consumers through the intimacy of the medium. Finally, there is Martha Stewart. Stewart focused on the publishing empire for her success and then branched out into the food preparation and television fields.