



June 24, 2006

Dining

'That Melon Tenderloin Looks Awfully Familiar...'

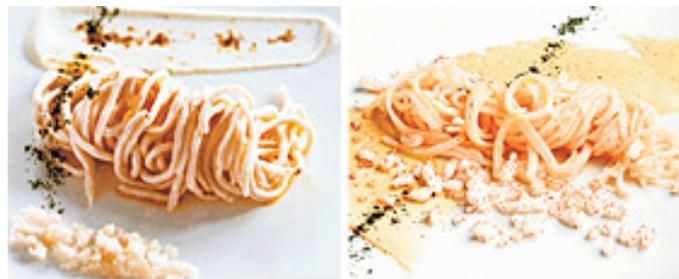
Chefs say copycats are ripping them off -- so some are fighting back with secrecy, lawyers; a patent for the noodles

 By **KATY MCLAUGHLIN**

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At minibar in Washington, chef Jose Andrés is known for his avant-garde tapas menu, including foie-gras cotton candy, lobster served with a lobster broth injection and melon tenderloin. So when he came across an online review and blog about a former protege's new restaurant in Tokyo's Mandarin Oriental Hotel, he was more than a little interested to read that the menu included ... foie-gras cotton candy, lobster served with a lobster broth injection and melon tenderloin.

That's when Mr. Andrés got in touch with his lawyer. Claiming that these and other dishes being served at the hotel's Tapas Molecular Bar were his inventions, he wants the Mandarin Oriental to pay him a license fee -- or change its menu. The Mandarin Oriental's lawyers are attempting to resolve the issue "amicably" but believe "the case is groundless," says Jill Kluge, group director of communications. Tapas Molecular Bar chef Jeff Ramsey did not respond to requests for comment.



Malou Berger, Takahiko Marumoto

SHRIMP NOODLES at Interlude in Melbourne, Australia, left, and WD-50 in New York.

Chefs copying other chefs is as time-honored a culinary tradition as snooty sommeliers. But at a time when one hit restaurant can mean multiple locations, television appearances and a line of cookware, imitation is no longer being seen as flattery. Many chefs now view menus and restaurant concepts as their own intellectual property, requiring staff to sign nondisclosure agreements, threatening alleged copycats with lawsuits and seeking patents for individual dishes.

These moves reflect a big shift in high-end restaurant culture. When French cuisine and traditions ruled, chefs went through long apprenticeships during which they were encouraged to mimic their mentors' methods of making hollandaise sauce or beef daube. But the past decade has seen the focus shift to innovation -- from subtle changes like chef Tom Colicchio's entirely a la carte menu at New York's Craft that encourages diners to mix and match dishes to the radical molecular gastronomy of chefs like Mr.

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Andrés.

At the same time, the culinary world has become more globally interconnected, making it far easier for chefs to keep track of what others are doing. Restaurant reviews from all over the world are available on the Web, and devoted foodies who tote cameraphones to restaurants post images of new dishes on message boards and blogs. That means that new ideas are spreading faster -- and that it's easier for chefs to police suspected copycats.

That's what happened three months ago on the eGullet.com¹ Web site. Sam Mason, a pastry chef at WD-50 in New York, set off an international dust-up when he posted a link to the Web site of Interlude, a restaurant in Melbourne, Australia, and asked: "Is it me or are some of these dishes strikingly similar to a few American restaurants?" Interlude's site showed photos of such unusual fare as noodles made of shrimp and a glass tube full of eucalyptus jelly and yogurt, dishes pioneered at WD-50 and Chicago's Alinea, respectively. Interlude's chef, Robin Wickens, had worked for a week at Alinea as a stagiere, or unpaid intern, and had dined at WD-50 while visiting the U.S.

eGullet's administrators then juxtaposed Interlude's images to nearly identical ones from WD-50 and Alinea. Within a few days, restaurateurs and chefs from around the country and dozens of eGullet members added to the thread, many branding Mr. Wickens a plagiarist.



Darko Zagar, tastingmenu.com

Mortified, Mr. Wickens says he removed the dishes from his menu and his site, and sent letters to the chefs whose work he'd copied explaining that he only wanted to utilize what he'd learned on his travels. "I never tried to claim them as my own," says Mr. Wickens, who says he told many patrons that the dishes had originated at the American restaurants.

LOBSTER WITH BROTH INJECTION at Tapas

Molecular Bar in Tokyo, left, and minibar in Washington.

This kind of idea-lifting has led more chefs to attempt to protect their intellectual property, according to attorney

Charles Valauskas of Baniak Pine & Gannon in Chicago. Mr. Valauskas says three or four years ago he had no chef clients; now they make up more than 10% of his practice. Some chefs are seeking patents for an original recipe or technological innovation -- which can be possible if the U.S. patent office deems the idea sufficiently novel. The downside, Mr. Valauskas says, is that getting a patent can cost \$5,000 to \$15,000 to file, mostly in attorney's fees, and take years. The upside is that patents can provide strong and enforceable intellectual-property protection.

A copyright can be given to the introduction to a recipe (often called the headnote), but not to the recipe itself, says Mr. Valauskas. A trademark can protect a name or logo, and trade dress can defend a design or style. Whatever the form of legal protection, however, infringements often must be addressed in court, making the process too expensive and time-consuming for many restaurateurs.

Homaro Cantu, chef and partner in Moto in Chicago, takes several steps to protect his ideas. First, he requires all employees to sign a four-page nondisclosure agreement, in which they vow not to reveal the restaurant's secrets. He doesn't allow stagieres in his kitchen. And he has filed for 12 patents for inventions. Among them: a "food replicator," a machine that spits out edible strips that are embossed with the image of

a food, such as an apple, and contain some of its flavor and nutrition; the idea is being assessed by the NASA Institute for Advanced Concepts, which develops space technology.

Other chefs, like Mr. Andrés at Washington's minibar, are investing in test kitchens, which allow them to experiment without interrupting the flow of work in the restaurant kitchen and come up with new ideas away from prying eyes. Mr. Andrés says he spends \$80,000 to \$100,000 a year staffing and maintaining his test kitchen.

Chef Norman Van Aken, who has leveraged what he calls his "new world cuisine" into multiple restaurants, says when he hears of chefs using more than three of his recipes without crediting him, he calls to request changes. Once he told a restaurant they'd be hearing from his lawyer. "That did the trick," he says.

Imitation sometimes extends to names. Mr. Colicchio, who co-owns 10 restaurants in New York, Dallas and Las Vegas called Craft, Craftbar, Craftsteak and 'wichcraft, says he was disturbed to learn of a place in Hong Kong using the word Craft in its name just as he was in discussions to open his own Craft there (the deal didn't go through for other reasons, he says).

Dining Concepts, which owns Craft Steak in Hong Kong, also owns restaurants called Tru, Bizou, and Olive -- all names identical or nearly so to well-known U.S. places. "I didn't know there was a restaurant called Craftsteak in New York," says Sandeep Sekhri, managing director of Dining Concepts. He says he was also unaware of the other similar names and adds that he registers his restaurant names with the Hong Kong trademark office.

For some chefs, these new realities in the restaurant world are bittersweet. "I'm torn, because I like to share ideas, but I'm being warned not to by patent attorneys and potential investors," says chef Wylie Dufresne of New York's WD-50. He says he feels badly that Interlude's Mr. Wickens got caught up in the fury over copying: "I think he made a youthful mistake." Still, Mr. Dufresne is talking to an attorney about patenting his recipe for turning shrimp into noodles, a dish the Australian chef copied.

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