



NYSRA NEWS

We serve you A New York State Restaurant Association Newsletter

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Harold Qualters & Rick Sampson

From the Desk of NYSRA President Rick Sampson

NYSRA's Own Superhero

At movie houses and drive-ins across the land this is the summer of superheroes: Dark Knight, Hulk, Iron Man, Bond. I write to you today about someone I consider NYSRA's real-life superhero who will be transitioning out of his current position toward retirement.

In 1999 a New York Times front page story proclaimed the age of the McJob and branded the restaurant industry as one of the worst places for a young person to aim a career. At the same time, the demand for restaurant professionals was just beginning to skyrocket with American cultural habits turning toward eating outside the home much more.

Few had heard the name Bobby Flay and the Food Network was just a fledgling endeavor. Flippin' burgers was the image most associated with working in a restaurant.

It didn't look good for the industry; but fortunately for the New York State Restaurant industry, NYSRA had a man with a vision, passion, commitment and a plan. The man was Harold Qualters and Harold's vision was to create a vibrant future for the industry through the New York State Restaurant Association Educational Foundation.

The plan was to elevate the standing and status of the entire foodservice and culinary industry by focusing on the future and educating kids. Through his deep love for people and food, Harold has played a foundational role in helping to transform New York state's foodservice and hospitality industry from the one portrayed in the Times article, to one where high school students now aspire to have rock star culinary careers and also a place where seasoned restaurant professionals have found new sources to advance their skills.

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NYSRA LABOR NEWS *ASK THE PROS*

Meal Period Requirements

Various NYSRA members have raised questions as to the Meal Period Requirements applicable to restaurants under State and Federal Labor Laws.

Section 162 of the New York State Labor Law requires that every person employed in or in connection with a mercantile or other establishment or occupation shall be allowed at least thirty minutes for the noonday meal. The noonday meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift of more than six hours, which extends over the noonday meal period, is entitled to at least thirty minutes off within that period for the meal period. For example, a restaurant employee working more than 6 hours could take his or her meal period from 11:00 a.m. to 11:30 a.m. or from 1:30 p.m. to 2:00 p.m. when the establishment may not be as busy.

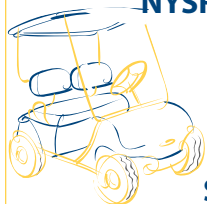
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Mark your calendar for: NYSRIPAC's 11th Annual Hospitality Cup Golf Outing

*September 29, 2008 at
Albany Country Club*

*See Page 14
for more golf
information*

SPONSORSHIP OPPORTUNITIES AVAILABLE



the menu

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Legal Bites



Preventing Competitors From Stealing the Unique Look and Feel of Your Restaurant

By Yuval H. Marcus

Does your restaurant have distinctive look and feel that customers recognize as being associated with your establishment? If so, your restaurant may be able to use trade dress law to stop other restaurants from copying those features that create your signature atmosphere.

Trade dress law prevents the copying of the look and feel of packaging, product designs and places of business when such copying is likely to cause confusion in the marketplace. In 1992, in *Two Pesos, Inc. v. Taco Cabana, Inc.*, the United States Supreme Court clarified that a restaurant's décor can be protected as trade dress, finding the following to be protected:

"A festive eating atmosphere having interior dining and patio areas decorated with artifacts, bright colors, paintings and murals ... The stepped exterior of the building is a festive and vivid color scheme using top border paint and neon stripes. Bright awnings and umbrellas continue the theme."

To establish strong trade dress rights, consumers must recognize that the features that create your restaurant's look and feel are associated with your restaurant. As a result, when these features are present in another restaurant, consumers are likely to be confused and mistakenly believe that there is an affiliation with your restaurant.

Since the *Two Pesos* decision, many restaurants have been able to require competitors to change the way they look because they copied protected trade dress. In one case, Fuddruckers was able to stop a competitor from using exposed food preparation areas, neon, director's chairs, a distinctive bakery area and white tiles on the walls, all of which created the distinctive look and feel of Fuddruckers restaurants. The competitor's use of elements associated with Fuddruckers was likely to cause consumers to mistakenly believe there was an affiliation with Fuddruckers.

More recently, one restaurant owner learned the hard way what happens when you copy the recognizable look and feel of another restaurant. The International House of Pancakes ("IHOP") has created trade dress rights by consistently using for many years a

blue, A-shaped roof for its restaurants. A restaurant owner opened a competing pancake house in a building that was formerly an IHOP-franchised location. The roof was painted the same color blue as IHOP's restaurants. When the owner refused to change the color of its roof and its name (It's Hop'n), IHOP commenced a lawsuit for trade dress and trademark infringement and obtained a temporary restraining order prohibiting the owner from operating a pancake house using a blue roof or using the "It's Hop'n" name. Ultimately, the owner agreed to change both the color of its roof (it is now beige) and its name.

Your restaurant can and should take steps to protect its look and feel using trade dress law, such as highlighting your distinctive features in advertising, being consistent and notifying competitors who are using your trade dress that they are violating your trade dress rights.

NEED.....

- ◆ **SANITATION SERVICES?**
- ◆ **GREASE TRAPS CLEANING?**
- ◆ **EQUIPMENT REPAIRED or RENTAL?**
- ◆ **UNIFORMS?**
- ◆ **POS SYSTEM?**
- ◆ **AIR CLEANERS/FILTERS?**

Restaurateurs....

Whether it needs to be rolled up or turned and burned, Marketplace will help you find it. Marketplace brings restaurateurs and vendors together to create a comprehensive online resource that will bring you what you need on the fly!

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