

Panda and poke: Restaurant trademarks can stir legal fights

By Terry Tang
The Associated Press

GILBERT, Ariz. — When picking a name for their Asian-Mexican fusion restaurant in suburban Phoenix, Paul and Nicole Fan settled on “Panda Libre,” hoping the mix of China’s iconic bear and the Spanish word for “free” would signal to customers the type of cuisine it offered.

That decision could cost them dearly. Chinese takeout chain Panda Express sued them in federal court alleging trademark infringement.

The lawsuit showcases how trademark law can collide with an evolving dining landscape, where restaurateurs peddling Asian or Asian “inspired” foods often pick a name that instantly invokes a connection to that culture. But getting a trademark for the new name can lead to ugly and sometimes public clashes over ownership and cultural appropriation. In recent years, businesses have butted heads over whether a restaurant or food truck can legally own the right to use words rooted in Asian American Pacific Islander cultures like “aloha” and “poke.”

The growing popularity of fast-casual restaurants like Thai, Indian, or poke — diced and marinated raw fish — has led to a rush for ownership of certain aspects of that culture, said Telly Wong of IW Group marketing agency in New York City. Having a name that conveys authenticity is crucial when consumers make snap judgements, he said.

“Sometimes you need that cultural shorthand to convey that message,” Wong said. “Otherwise, you’re explaining to people, ‘Oh, at Jack’s, we sell southern Chinese food.’”

Panda Express’ parent company, Rosemead, California-based Panda Restaurant Group, says it has owned the trademark for “Panda” for Chinese food services since 2001. The chain wants a court injunction and for Panda Libre to destroy signs, social-media posts, and other materials with the name.

“It would be like starting a new company. That alone there is hundreds of thousands of dollars in this restaurant,” Nicole Fan said. “Going through this whole ordeal, the lawsuit, will bankrupt us.”

On top of punitive damages and legal fees, Panda Express, which generated \$2



billion in sales last year, is asking for all of Panda Libre’s profits since it opened last year in Gilbert, about 20 miles east of Phoenix.

“Oftentimes it’s overstated — the damages — to get the attention of the defendant,” said Charles Valauskas, a Chicago intellectual property attorney who has represented restaurants. “It’s not like (Panda Express is) going to sit there and wait till every last penny is drained from a bank account.”

Experts say Panda Express is within its right to trademark “Panda” for restaurant and food products.

“If you were selling pandas under the name ‘Panda,’ you probably wouldn’t be able to do that because it’s describing literally what you’re doing,” said Mark Simpson, a veteran intellectual property lawyer in Philadelphia. “It’s like trying to trademark the words ‘grocery store.’ You could trademark ‘Whole Foods’ the grocery store.”

Panda Express, which Andrew and Peggy Cherg launched in 1983 as an offshoot of their Panda Inn restaurants, has more than 1,900 locations nationwide. The company says it has a “legal obligation to consistently protect them” but is hopeful for a resolution.

“We believe there is a path forward that allows for this small business to operate while respecting our intellectual property rights, and we remain open to a conversation with those involved,” the

company said in an e-mail.

Nicole Fan says nobody has entered Panda Libre thinking it was a Panda Express. She points to the logo — a panda dressed in a cape and mask like a Mexican wrestler — and the fact that there are other eateries that use “panda.”

Panda Restaurant Group said it takes legal action on a “case-by-case basis.” It also says it settled several trademark infringement issues without litigation last year.

Other efforts to trademark cultural words have been met with fierce online backlash.

In 2009, loyalists to chef Roy Choi’s Kogi Korean taco truck went online to accuse Tex Mex chain Baja Fresh of stealing his concept. The Los Angeles-based truck’s name came from a combination of *gogi*, the Korean word for meat, and “K” for Korean BBQ. Baja Fresh had applied to trademark “Kogi” for its own line of Korean tacos and merchandise.

Within a day, the company publicly apologized for appearing to hijack Kogi. Baja Fresh said it would instead use *gogi*. It also dropped the trademark pursuit.

In 2018, Chicago-based Aloha Poke Co. trademarked its name and sent cease-and-desist letters to poke restaurants with “aloha” or “aloha poke” in their names. In Hawai’i, the birthplace of the raw fish dish, locals decried a “mainlander” dictating how their community used their own language. A

PANDA PROBLEMS. The outside of Panda Libre, an Asian-Mexican fusion restaurant, is seen in Gilbert, Arizona. Getting a trademark for a name can lead to ugly and sometimes public clashes over ownership and cultural appropriation. In recent years, businesses have butted heads over whether a restaurant or food truck can legally own the right to use words rooted in Asian American Pacific Islander cultures, such as “aloha” and “poke.” (AP Photo/Terry Tang)

social-media firestorm followed.

Jeff Sampson’s Aloha Poke Shop in Honolulu was among those worried about a lawsuit. But he got a letter from Aloha Poke Co. attorneys that said he was “allowed” to use the term because of the geographic location.

“That was the worst business decision they made to go after ‘aloha’ and ‘poke,’” Sampson said. “Hawaiian poke has been around for hundreds of hundreds of years. It’s like a cheeseburger. You can’t trademark cheeseburger.”

Wong would advise anyone trying to trademark a word or term — be it for a food or a fashion line — to make sure you’re not going to be seen as culturally insensitive or appropriating.

“Consumers are just more informed and culturally aware now,” Wong said. “It’s just good business practice to be authentic.”

Nicole Fan says she and her husband will try to fight the lawsuit and hang on to the Panda Libre name, which they had trademarked without problems.

But now, they are at risk for “doing the right thing,” she said.

Terry Tang is a member of The Associated Press’ Race and Ethnicity team.

Chinese company abandons \$1.8B Arkansas paper mill plan

By Andrew DeMillo
The Associated Press

LITTLE ROCK, Ark. — A Chinese company has abandoned its plan to build a massive paper mill in southwestern Arkansas that had already been delayed by trade tensions.

Sun Paper told governor Asa Hutchinson and economic development officials in a letter dated March 15 that it would not move forward with its plan to build a mill in Arkadelphia, about 60 miles southwest of Little Rock. The company cited “continued political friction and economic instability” as well as the coronavirus outbreak as reasons for walking away from the project.

“With the likelihood of the project uncertain, it is also fair to allow the state of Arkansas to use its resources for other ventures that have less uncertainty in the medium term,” Andrzej Bednarski, the company’s international project director, said in a letter. “At this moment, the collective uncertainties make it a better choice for both of us to abandon the project.”

The letter was first reported by *Talk Business and Politics*.

The announcement came after Arkadelphia officials announced that the community was marketing the 1,000-acre site planned for the mill to other potential projects. The \$1.8-billion mill was announced in 2016 but has faced uncertainty since then because of trade tensions.

State commerce secretary Mike Preston said none of the incentives that had been announced at the time have been paid to the company and the state was looking at ways to use the now de-obligated funds for other economic development opportunities.

“It’s a big disappointment for everyone involved,” Preston said in a statement. “Lots of hard work, from the local community to our state partners, went into to seeing this project succeed.”

Slay the Dragon — a gerrymandering investigation

By Jake Coyle
The Associated Press

Feeling beaten down by the news? Why not watch a documentary on gerrymandering to cheer you up?

Slay the Dragon, by Chris Durrance and Barak Goodman, deftly outlines how redistricting has eroded American democracy and helped usher compromise out of our legislatures. It’s a level-headed documentary about an unlevel playing field that traces the scope and magnitude of district map-drawing for political gain.

Slay the Dragon, which is now available on-demand and in digital release after having its theatrical release cancelled by the coronavirus, may not be the most heartening portrait of our political system. But it’s a vital one and it provides reasons for optimism, too.

Aside from laying out the strategies and manipulations of gerrymandering, it tracks a handful of those fighting its practice, including the lawyers whose case rises to the Supreme Court and a humble Michigan woman named Katie Fahey. She turns almost accidental activist when a Facebook post leads to the creation of a grassroots campaign to put Michigan’s district drawing in the hands of a bipartisan citizen commission — a practice now used, in some form, in 21 states.

But most states have their maps drawn



up by their own state legislatures every 10 years, an approach that can breed obvious conflicts of interest. Gerrymandering has been around for more than 200 years. Its name comes from a Massachusetts redistricting that gave early 19th-century Boston-area districts the appearance of a salamander. Its long been a tool of both parties, though *Slay the Dragon* is focused on the Republican efforts to win state houses in the 2010 election with the intent to redraw maps.

It was a hugely successful effort (some of the key strategists are interviewed here) that led to the flipping of 11 state legislatures. The subsequent redistricting created its own assortment of oddly shaped maps: a “snake” in North Carolina, an “upside down elephant” in Texas, a “praying mantis” in Maryland.

Redistricting can have the result of quarantining the votes of one party or one demographic, thus muting the political power of potentially a larger portion of the

POLITICAL LINES. This image released by Magnolia Pictures shows a scene from the film *Slay the Dragon*. (Magnolia Pictures via AP)

public and essentially preordaining that a party will hold certain congressional seats. Several of North Carolina’s districts, in a map that has since been ruled to have violated the state constitution, were 55% or 57% African American.

Slay the Dragon seeks to draw the connections between such seeming governmental minutia with much broader policy and political effects. The filmmakers explain how Michigan’s redistricting played a pivotal role in the Flint Water crisis, how Wisconsin’s redrawn districts fuelled the divisive agenda of former Wisconsin governor Scott Walker, and how such maps potentially aided the election of Donald Trump in 2016.

The movie is ultimately an effort to take something arcane and make it clear — to read between the lines, so to speak. No one will mistake the politics of *Slay the Dragon*; it’s clearly liberal-leaning. But the aims of the documentary’s characters aren’t in themselves political: they want votes to count. And they don’t want Washington operators remaking their districts.

Slay the Dragon, a Magnolia Pictures release, is rated PG-13 by the Motion Picture Association of America for brief strong language. Running time: 101 minutes.