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## INTELLECTUAL PROPERTY NEWS

### ***First Circuit decides that recipes (or any instructions or list of ingredients) are not subject to copyright protection***

On August 21, 2015, the U.S. Court of Appeals for the First Circuit confirmed the District Court's dismissal on all grounds of a Complaint filed against South American Restaurants Corp. ("SARCO"), alleging copyright infringement of a recipe and fraudulent registration of a trademark and claiming damages in excess of \$40 million.

In September 2012, Norberto Colón alleged that, during his employment with SARCO, operator of the Church's restaurant franchise, he developed the idea for a chicken breast sandwich and named it the PechuSandwich. Church's has been selling the PechuSandwich since 1991 and later registered the PechuSandwich trademark. Colón claimed that the PechuSandwich is a work of his authorship and, accordingly, that he was entitled to the profits SARCO derived from the continued sale of the sandwich. Likewise, he alleged that he was the owner of the PechuSandwich trademark and that SARCO fraudulently registered it in its name.

The U.S. District Court for the District of Puerto Rico granted SARCO's motion to dismiss the complaint under Rule 12(b)(6) for failure to state a claim, concluding that neither the name PechuSandwich nor its recipe are eligible for copyright protection. As to the claims relating to the fraudulent registration of the PechuSandwich trademark, the First Circuit agreed with the District Court that, because the Complaint did not allege any facts to support a conclusion of false statements, Colón failed to sufficiently plead that SARCO committed fraud in the procurement of a federal trademark.

McV Intellectual Property attorneys [Dora Peñagaricano](#) and [Isabel Torres-Sastre](#) represented SARCO in this important case.

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