

Food sector fails to protect local culinary delights

IP PROTECTION: Entry into the WTO may mean that the rights on some local eating traditions may soon be bought up by savvy foreign businesses

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Farmers and food processors need to protect their intellectual property (IP) before foreigners snap up the rights to local favorites such as pearl-milk tea (珍珠奶茶) and unfried spring rolls (潤餅), legal experts said yesterday.

"Taiwan's agricultural products are fantastic, but no-one has packaged and licensed them overseas," corporate lawyer and IP specialist Paul Hsu (徐小波) said yesterday. "Our agriculture industry needs to think about how to package its technology, sell it overseas, or earn royalties on it."

Hsu was speaking at a seminar on the topic of establishing IPR (intellectual property rights) systems to enhance corporate competitiveness, organized by the Industrial Development Bureau, Ministry of Economic Affairs.

A good example of IP would be the kiwi fruit.

"The kiwi is an excellent example," Hsu said. "The kiwi tree is controlled by the New Zealanders who keep on improving it. It is biotech intellectual property. Recently they came out with the golden kiwi which is so much tastier."

Hsu took a straw poll of the seminar participants, a collection of several hundred industry leaders and members of the Chinese National Federation of Industries (全國工總), asking how many in the audience liked unfried spring rolls, called "ruen bing" in Mandarin, and how many liked hamburgers. Imported burgers won the day, much to Hsu's chagrin.

Hsu pointed out that while one can get a foreign-made burger all around Taipei, purchasing an unfried spring roll would involve a focused search in a night market. He wondered aloud why nobody from Taiwan had franchised the spring roll.

"Anyone can make hamburgers, but few can turn it into a franchise," he said. "Taiwanese shouldn't think traditional businesses are the end

of the road, we just need a new business model."

Unfortunately, many products have difficulties securing patents. Pearl-milk tea, for example — a Taiwanese creation — is popular in California and New York, but the stores that sell it are not all Taiwanese, nor do the Taiwanese earn royalties on each sale.

"A patent has to involve a high-level of creation that employs natural processes. Pearl-milk tea doesn't fall under this," said Ainoon Shabirin, a paralegal specializing in patent law at Winkler Partners attorneys-at-law in Taipei.

Article 20 of the patent law says that in order to be patentable, an invention must be novel, inventive, and industrially applicable, she said.

Milk tea is not novel, but she conceded that the pearls could be, especially if the Taiwanese patented the process by which they are made.

"Then all pearls produced could be patented," she said. "The same would be true for spring rolls. If someone came up with a machine that makes spring rolls quickly, that could be patented."

Patents are not the only way to protect IP, Hsu said. It's possible to use other methods, like the protection of trade secrets. This is the method Coca Cola used to protect its syrup recipe, which was never patented. If it had been, the patent would have expired by now, making the syrup open to the company's competitors.

The new business models won't come cheap.

"As well as good lawyers, [farmers will] need good marketing and financial support," Hsu said.

Smaller farmers could use talent within their own families, but individuals could also call upon the support of farming cooperatives to fund the process of protecting their IP and benefiting from the protection.

High-tech firms in Taiwan recognized early that IPR protection would be important in the WTO, and firms such as Winkler and Hsu's Lee and Li Attorneys-at-Law (理律法律事務所) represent many of them. Neither firm has clients in the agriculture sector.

"The agriculture sector didn't pay any attention to IP in the past," Hsu said.

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