

Eat Out

THE CITY'S BEST RESTAURANTS, BARS AND CULINARY RICHES



NAME DROPPING

Deciding what to call a new restaurant is no small task, and lately, the process is resulting in legal battles and new signage. For diners, it's Rolodex hell. *By James Oliver Cury* *Illustration by Milan Trenc*

New York City has more than 22,000 bars and restaurants, and apparently, we are running out of names for them. Some restaurateurs have gotten around the problem by just using the location's street address or putting crazy punctuation in the title. But now even the most inspired choices are causing conflict, if not litigation.

In the last two months, Sen (formerly Vicala) became Bao 111, Republi'K became DRK (Dominican Republic Kafe) and Douglas Rodriguez's Chispa became OLA—all to avoid legal action from similarly named competitors. Meanwhile, celebrity chef Terrance Brennan of Picholine and Artisanal had to go to court in mid-March to defend the use of his

own name in the recently opened Terrance Brennan's Seafood and Chophouse; Brennan's in New Orleans claimed to own the rights to the title. Had Shakespeare been talking about restaurants when he asked, "What's in a name?" the answer would have been, A lot of headache, a ton of money and a battery of lawyers. ▶

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"Some days, working on the name is all we've done," says restaurateur Jeffrey Mills, who has been trying to figure out what to call his soon-to-open Chelsea restaurant since January 2002. Mills, together with co-owner Chris Medeiros and chef Gary Robins (of Match and Aja), has employed scores of people to help brainstorm the perfect moniker. He hired a feng shui consultant for ideas. He even spent the night sleeping in the space just to catch the vibe. He and his partners have been close to accepting at least seven names so far. "It started off as Luk, then Den, then Mantra, then Epic, then Sirrocco, then Pacific West and finally Mandala," Mills explains wearily. Last week, they scratched Mandala.

Mills's pain is self-inflicted, but a surprising number of restaurateurs have mistakenly assumed that they could launch with a certain name only to find that someone already owned the rights to it—and anything that sounds like it. The restaurants at issue need not be located in the same borough, city or even state. Sometimes, they're thousands of miles away.

Chispa had to change its name—and scrap its logo and graphics—after receiving a letter from lawyers representing a Chispa restaurant in Miami. Complaints from far closer to home forced Republi'K to nix the name. After opening in December, the restaurant was getting good reviews for its Latin food when the management received a letter from the folks at another Republic—Jonathan Morr's Asian restaurant in Union Square—telling them to change the name, or else. "I don't want other people to capitalize on the brand," says Morr, who opened Republic in 1995 and successfully stopped the Limelight club from using the same name a few years back.

"We had to change the menu because several dishes had Republi'K in the name—like Republi'K paella," says chef Ricardo Cardona. "The lawyers said that even the drink names had to change." Never mind that the other

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Republic uses a different spelling, serves a different cuisine and caters to a different crowd. The likelihood of confusion and the price of a legal battle proved to be too high for Cardona and owner Carlos Gomez to fight the order. So they relented, but the conflict still ended up costing about \$10,000 in legal advice and changes to the menus, promotional postcards, business cards and even Republi'K-branded calling cards.

Terrance Brennan's fight didn't wreak havoc on his finances as much as it challenged his ego. "I had no idea that I wouldn't be able to use my name," Brennan says. Originally, his restaurant was to be called Brennan's Seafood and



WHERE THE EATS HAVE NO NAME
Sal Inzerillo is using a temporary title—Name in Progress—for his Italian restaurant.

Chophouse. When he received a letter telling him that Brennan's was trademarked by the New Orleans restaurant, he changed the name to Terrance Brennan's Seafood and Chophouse. "And they still contested," he says. Lawyers claimed that the name would dilute the New Orleans Brennan's brand because people would likely shorten the name of the New York eatery to *Brennan's* in conversation. The case went to court and Terrance Brennan won in mid-March.

Like many restaurateurs, Brennan failed to realize the power of obtaining a national trademark. The process, also known as federal registration, requires lawyers, but once you've secured a name, no other restaurant in the U.S. can use it. Restaurateurs should, at the very least, find out if someone else has applied for a trademark (anyone can do this on the U.S. Patent

and Trademark Office website, www.uspto.gov) and, more important, see if the conflicting place is the same kind of business. McDonald's, for example, can keep any other restaurant from using its name—even one owned by a Joe McDonald. But the suits behind the golden arches can't argue about a McDonald's office supply store. "You have to prove there is more than a potential for confusion; you have to show there is a likelihood of confusion," says Jim Wray, the National Restaurant Association's trademark law expert. Wray had suggested that Mr. Brennan call his place Terrance B.'s Seafood and Chophouse to capitalize on his celebrity cache, and still drop the surname per the lawyers' request.

conflict unless you were going up against a very large organization," she says. "You didn't have the broadcasting of a name beyond your own neighborhood. Now people are much more careful." Of course, some New York restaurants have been playing name games for decades. Williamsburg residents may remember that Planet Thailand was forced to change its name to Plan-Eat Thailand in the late 1990s after Planet Hollywood's lawyers came calling. More recently, local bars and restaurants seem to have caught a case of the blues. At last check, the list included Blue Bar, Blue Elephant, Blue Fin, Blue Grotto, Blue & Gold, Blue Hill, Blue Note, Blue Ribbon, Blue Smoke, Blue Velvet and Blue Water Grill—none of which are affiliated. The blues can peacefully

coexist because no one can legally trademark extraordinarily common descriptive words like *blue*, or words that describe what's being sold, like *oyster*. But a few upcoming eateries may not have it as easy. By the time you read this, various local restaurateurs plan to have opened venues called Carriage House, Home, Pasha and Raga—and they will have to wait and see if the owners of New York's previously existing Carriage House, Home, Pasha and Raga are going to put up a fight.

Savvy businessmen could just follow the lead of brothers Ernie and Sal Inzerillo. Unable to nail down the right name for their East Village Italian restaurant, they've given up for now and have decided to call the joint Name in Progress. It might not be the best marketing plan, but they're fairly sure they won't get sued.