

## The Tasting MENU

### APPETIZERS

#### For Font's Sake: Don't Let Your Branding Become a Burden

IP laws may protect font (the underlying digital file that tells a program or application how to display particular characters) and typeface (the "look" or the "design" of characters). This could include a design patent for typeface lasting up to 15 years, copyright protections for the underlying code, and/or trademark protections for the name of a typeface (though not the "look" or design itself). While there are many fonts that are made freely available or are the subject of proper licenses, it is always best to make sure that this is the case before using a particular font as a part of your overall brand (e.g., logos, menus, websites, print advertising). Often, marketing and creative agencies use open source fonts or have proper licenses, but it is best to double check (or seek indemnity for any claims of infringement) before signing off on a design. An experienced IP attorney can help ensure your branding hygiene meets Grade A standards.

#### Leases Can Require Restaurant Tenants to Cleanup Others' Leftovers

While restaurant operations may not themselves be environmentally-sensitive, if you lease property, there are some important provisions that should be in the lease to protect yourself as the tenant:

- Ensure that landlord is on the hook for any and all pre-existing contamination. Environmental cleanup laws are often "strict liability", meaning that both the owner (landlord) and the operator (tenant) can be held liable to clean-up contamination, regardless of fault.
- If a landlord seeks environmental contamination indemnity from you as tenant, tenants should attempt to limit their indemnification obligations to conditions actually caused by the tenant.

#### A Toast to Transactions

As reported in our last issue, deals are still on the table despite industry concerns regarding increased regulatory scrutiny. For instance, Sheppard Mullin recently represented DAOU Vineyards, the fastest-growing luxury wine brand in the U.S. trade in the past year, in its acquisition by Treasury Wine Estates for \$900 million plus an additional earn-out of up to \$100 million. More details can be found [here](#).

### Restaurant Work | Task Force

The Sheppard Mullin Restaurant Task Force is a vertically integrated team of attorneys who coordinate their institutional knowledge of the restaurant industry and legal expertise to provide seamless representation. The team delivers a full menu of resources on matters that particularly affect the restaurant industry, including counseling clients through acquisitions, joint ventures and fund formation, franchise, supplier, and distribution agreements, data privacy, labor and employment, financing, bankruptcy and restructurings, ADA, and lease issues. The Tasting Menu is a collection of emerging issues we see impacting this industry.

### MAINS

#### California's FAST Act To Go, But NLRB Delivers a New Joint-Employer Rule

Franchisors have long grappled with evolving and inconsistent standards for determining when a joint-employer relationship exists such that a franchisor can be liable for labor and employment law claims even when it does not exercise direct control over its franchisees. In particular, in September 2022, California passed the FAST Act, which imposed joint employer liability on both franchisees and franchisors. A year later, that FAST Act was repealed following an unprecedented deal between labor groups and the fast food industry. That deal imposes a sectoral minimum wage for certain fast food workers of \$20/hr starting April 1, 2024, and creates an unelected "Council" to recommend employment regulations and workplace standards in the fast food industry, but scraps the proposed joint employer liability rule from the original FAST Act. The NLRB has stepped in to fill that void, issuing a new rule that (i) broadens the standard for determining joint employer status under the NLRA and (ii) potentially increases the ability of employees to unionize. The new rule considers entities joint employers if the two "share or codetermine" essential employment terms and conditions, rather than only when the entity has direct and immediate control over the same. The "terms and conditions" now overlap with many of the core subjects of collective bargaining, requiring more parties to participate and bargain with unions for CBAs. The NLRB plans to implement the new rule in February 2024. Time will tell whether the NLRB has better luck than California did in its quest to expand employer status. That said, restaurants should review their current agreements and relationships with other entities to determine if joint employment is on the table.

#### SCOTUS Implies It May 86 "Tester" Standing

In [Acheson Hotels, LLC v. Laufer](#), the Supreme Court was set to consider whether a consumer could sue hotels whose websites failed to state whether they have accessible rooms for the disabled as required by the ADA, even if the consumer did not intend to visit the hotel. Prior to the hearing, the consumer abandoned her case. While the Court did not have to review the matter after this, Justice Thomas went ahead and issued advisory language criticizing ADA testers who seek to vindicate the public interest by "surf[ing] the web" to ascertain ADA compliance of facilities they do not intend to visit and obtain monetary settlements from businesses seeking to avoid substantial defense fees, all without being bound by the limits of prosecutorial discretion required of a government official. Thomas concluded that the consumer would not be able to bring suit because the alleged barrier on the website caused her no harm and that her "testing" activities went far beyond what Congress envisioned when enacting ADA Title III. This commentary should be helpful to restaurants facing ADA claims.

### DESSERTS

#### Restaurants Act Public Affairs Conference

Join the National Restaurant Association on April 15-17, 2024 in Washington, D.C. to hear from top political speakers and celebrate the industry.

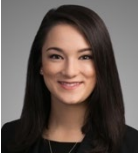
#### ExpoWest

Sheppard Mullin will be hosting a reception on March 13, 2024 at ExpoWest. If you would like to receive an invitation, please email: [lshovlowsky@sheppardmullin.com](mailto:lshovlowsky@sheppardmullin.com).

## Restaurant Task Force



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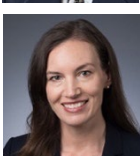
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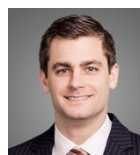
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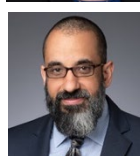
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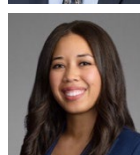
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