

The cost of convenience: Understanding the third-party delivery dilemma

Protect your business from potential legal consequences of using these services
Damien Orato, Suzanne Singer | Apr 24, 2017

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UberEats. Postmates. Seamless. Grubhub. Eat 24. These are just a few of the names leading the market in the quickly growing field of third-party delivery services.

Third-party deliver generally lifts revenue by generating additional business for restaurants, especially among Millennials, who prioritize instant accessibility over cost. The introduction of third-party delivery to a restaurant's business model is especially enticing because some sales are in decline. The convenience factor these services bring to the table is something the restaurant industry cannot overlook.

In the midst of this tech renaissance, where maximizing convenience is king, there are important liability considerations associated with third-party delivery people bridging the gap between the restaurant and consumer. Emerging issues in this new landscape include the potential for increased litigation involving matters such as foodborne illnesses, auto accidents and possible intentional or criminal acts by delivery personnel. So, how can restaurants minimize the potential for liability exposure while using third-party delivery services?

A recent interview with a Grubhub corporate employee confirmed that Grubhub, as is the case with most of these providers, maintains written partnership agreements with all of the restaurants for which it provides services. Regardless, and given the nature of litigants who look for the classic "deep pocket," it makes sense that customers will hold restaurants at least partially responsible for errors, even if restaurants have formal agreements with third-party delivery companies, and even though the consumer never interfaces with the restaurant itself during these transactions.

To mitigate risk, restaurants that utilize third-party delivery services should include not only basic operational content in these agreements, like menu pricing, but also adequate liability limitation language. In formulating such a partnership, restaurants should consider the following provisions in any written agreement:

- Require the third-party delivery service and its drivers to actively disclaim any agency relationship with the restaurant;
- Include strong indemnification terms which provide for a full shift of responsibility to the third-party delivery service for any claims arising from a consumer's use of the services;
- Require third-party delivery services to carry insurance coverage that names the restaurant(s) as an additional insured;
- Require proof of insurance by the third-party delivery service and for any driver it utilizes, including the requirement of clear vehicle ownership by the driver or service;

- Require compliance with industry standards for safe food handling, including temperature maintenance and procedures to follow in case a customer is unavailable to take the delivery of an order at the time specified; and
- Partner with a third-party delivery service that uses tracking technology so the “chain of custody” can be firmly established to aid in the defense of foodborne illness cases.

Another emerging concern involves third-party delivery services like Postmates, which sometimes delivers from restaurants without permission. Some restaurants may already be engaging with third-party delivery services without their knowledge. These types of services weigh providing a wider array of choice over forging distinct partnerships. Even with this type of passive permission from the restaurant, there is still a risk of a non-verbal partnership creating liability exposure. For this reason, restaurants should safeguard against unsanctioned delivery services in order to inform the public that the third party operates independently from the restaurant. Here’s how to do that:

- Specify the third-party delivery service that the restaurant has agreements with and issue disclaimers on the restaurant website regarding unauthorized services;
- Include disclaimer language in take-out or delivery menus; and
- Include disclaimer language in any online or paper advertisement for the restaurant.

As technology evolves and becomes more innovative, we can expect a spike in personal injury or consumer protection lawsuits involving these types of third-party delivery services. It is important to take precautionary measures to reduce the risk of liability.

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Getting the Real Dish on Food Delivery

THANKS TO DEMAND FOR MORE CONVENIENT SERVICE, CONSUMERS CONTINUE TO TURN TO DELIVERY TO FULFILL THEIR RESTAURANT FIX IN A HURRY—AND THE FULL-SERVICE INDUSTRY IS WHERE THE FASTEST GROWTH IS TAKING PLACE.

By Barney Wolf | December 2016 | Service

Delivery has long been a component of America's pizza parlors and Chinese food purveyors, but now—as time-strapped consumers demand convenience—all manner of restaurants are offering door-to-door To-Go services. Laying claim to this business opportunity is a growing industry of online third-party delivery services, eager to run the delivery relay on behalf of restaurants.

These providers include divisions of fast-growing Amazon and Uber, as well as others that have a history in dealing with restaurants, such as Groupon and GrubHub. Most depend on technological advancements powered by the ubiquitous adoption of smartphones and mobile devices.

Although just 5 percent of restaurant spending is done through online delivery platforms, according to investment firm Morgan Stanley, and pizza makes up more than half of that, delivery services are revving their engines to grow the business. In fact, NPD Group restaurant analyst Bonnie Riggs, who acknowledges that pizza currently makes up 64 percent of the 1.7-billion-trip delivery pie, suggests that full-service restaurants are where the growth is occurring. During the three-year period that ended in May, overall restaurant delivery was flat, an NPD report found. However, when pizza data was excluded, the report found that delivery was up 26 percent—up 21 percent for casual-dining restaurants alone.

NPD also found that diners not currently using delivery services would consider doing so for casual concepts more than any other segment. As a result, “full-service restaurants have the best opportunity for growth in delivery,” Riggs says.

Similarly, Morgan Stanley notes that third-party online restaurant delivery services, which are mainly in larger metropolitan markets, have been gaining traction because of the incremental business the service produces for restaurants. “In our view,” the investment firm's analysts state, the nation “is in the early days of a significant shift in the access to deliver food,” and the trend will gain steam as various internet-enabled businesses continue to grow and offer more variety.

That's one reason big companies with infrastructure in place, like Uber and Amazon, entered restaurant food delivery. “What else can we do with this vast network of drivers and the efficiencies it brings?” is the question we asked,” explained Uber's special projects chief, Jason Droege, at the National Restaurant Association show in May. “To connect people with the food they want has a lot of power.”

People are busy and have less time dedicated to food preparation at home, says Anna Tauzin, senior marketing and innovation manager at the NRA. “They like what restaurants have to offer, and now they want all those options at home.” Two years ago, restaurant sales surpassed grocery sales, the NRA reported. Not surprisingly, consumers have sought more ways to source food from eateries. “As consumer demand has gone up, technology and delivery companies have risen to meet that demand,” she says. Today, UberEats is in more than a dozen markets, and Amazon restaurant delivery, part of its free-delivery Prime membership program, has grown to 12 markets.

Third-party delivery also frees restaurant operators from absorbing “all the other costs—having liability insurance, hiring drivers, and making sure the whole experience is positive. It puts all that in other hands,” Riggs says. At the same time, Tauzin notes, delivery is a means to increase sales and marketing to new customers.

There is, however, a bit of a Catch-22 for full-service restaurants: The biggest users of online delivery are tech-savvy millennials, who typically have fewer dollars to spend. That makes pricier full-serves appear less attractive than less-expensive quick serves. But Riggs notes that by the time a consumer adds the costs of delivery services—minimum order, delivery charge, and tip, for instance— “you might as well go with a casual restaurant, because the cost may be only a buck or two different.”

Driving Control

For operators, certain issues are paramount: food safety, menu integrity, speed of service, and competent couriers, among others. Restaurants that partner with specific delivery services gain more control over these matters.

Increasingly the business model takes on the mentality of a partnership, and many delivery businesses work with the restaurants to determine what foods are offered online—notably foods that travel well. They may also suggest the kind of packaging to use and handle payments on behalf of the restaurant. Some delivery operators even provide photographs of menu items on their website.

The companies communicate with restaurants in various ways, and many provide restaurant operators with an iPad or similar device dedicated to online orders. Drivers are typically equipped with hot and cold bags to keep the food at the right temperature.

In return, delivery companies typically charge a percentage of the online order—often 10 to 20 percent—and most charge a delivery fee.

A few services, such as DoorDash and Postmates, not only sign restaurants as partners, but also offer diners the ability to order from an even wider range of menus. Their couriers can visit any restaurant, order items, and then deliver those to the buyers, via car or bike. Some operators don’t like having little control over how their food travels. “We have received a number of complaints from operators,” Tauzin states.

Both DoorDash and Postmates say they’d rather forge partnerships with restaurants but want to give consumers the choice. “We understand this business is driven by forming deep, lasting relationships with restaurants in the form of supporting them and helping them grow their business,” says Ryan Broderick, head of merchant operations for DoorDash, which is in 25 metropolitan markets. At the same time, he notes, “From the consumer standpoint, we pride ourselves on offering selection.”

About 30 percent of Postmates’ business is with restaurant and retail partners, but “we don’t need a partnership” to provide delivery to a consumer, explains Anand Dass, director of business development. “We are just matching a customer with a courier, who we call a Postmate, who does the transaction on the part of the customer.”

However, when there's a partner relationship, the restaurant's menu is curated to items that will travel well, with consideration given to how far they can be transported, Dass says. Couriers are dispatched to be at the restaurant when the food is ready. All this "makes it better for the customer."

GrubHub, which launched in 2004, is the nation's largest online and mobile food ordering company, with 44,000 restaurants in some 900 American cities. It began as an online restaurant ordering service and started its delivery business in 2014. Over the years, it acquired a number of other online menu and delivery companies, including Seamless, which began as a web-based way for companies—and later consumers—to order from restaurants.

GrubHub delivery began in its hometown, Chicago, as the test market, says Meghan Gage, public relations manager. "We wanted to be sure we could do it really well." Today, some 5,000 restaurants— independents and chains alike—are part of the delivery service in 50 markets. Having restaurant partners who have used GrubHub ordering system for years has been an advantage in delivery, she notes.

For instance, New York City's The Stanton Social, which celebrity chef Chris Santos and partners opened on the Lower East Side in 2005, uses GrubHub and Seamless delivery exclusively. "Other restaurants in the neighborhood do, too," says Michelle Alden, the restaurant group's general manager.

The restaurant, part of TAO Group, is known for its shareable plates, but doesn't offer its entire menu on the delivery services' sites, because some just don't travel well. Packaging—having salad and dressing in separate containers or meatballs in a specific vessel—is crucial.

In the year since beginning delivery, the restaurant has seen a revenue uptick. A number of diners who ordered online now visit the restaurant, while regular guests sometimes order online if they "don't want to get dressed up or fight the lines," Alden notes.

Caviar, which was launched in 2012 by a group of passionate San Francisco foodies because favored restaurants weren't delivering, now partners with some 2,000 restaurants—from fine-dining spots to food trucks—in 17 markets.

"I think our high-quality partners is what sets us apart," says Catherine Ferdon, a spokeswoman for Caviar, which was acquired two years ago by payments company Square. One of Caviar's distinguishing features is the ability to order food up to a week in advance.

"We work closely with our partners all the way through," from photographing menu items for its online pages to testing whether the food can be delivered well, she notes. The service also offers streamlined ordering for groups or events, scheduling, and bill splitting.

Two upscale pizza-centric restaurants in Brooklyn, New York, that have received great reviews, Emily and Emmy Squared, use Caviar, solely. "It's just the best option for our restaurants," says Emily Hyland, who owns the eateries with her husband, Matt.

"New York is a very delivery-oriented culture. Nobody cooks. But we're a small operation, and we had to decide what we would need to do to deliver," she notes. The third-party delivery service "takes all of the logistical headaches and nonsense out of our hands."

Emily's thin-crust pies are baked in a wood-fired oven, while Emmy Squared serves Detroit-style pizza. "I did a lot of R&D, ordering from my apartment, which is 15 minutes away," Hyland says. "The pizza always came delicious." Parts of the menu, such as the popular Emily Burger, are not available via delivery.

Keeping it Local

Groupon's roots are in local businesses, and that includes restaurants. The company's initial deal was with a pizza place. "One of the key benefits is Groupon has acquired tens of millions of customers who have downloaded our app," says Dan Roarty, the Chicago-based company's senior vice president of restaurants. Last year it acquired restaurant delivery service OrderUp and is now integrating online ordering into the Groupon app.

Third-party delivery for full-service restaurants isn't new, but it's been fragmented. Many cities have their own services, like Delicious Deliveries in Phoenix and Tucson, and Cafe Courier in Columbus, Ohio.

While restaurants that use delivery acknowledge that using a third-party delivery service means they cede a portion of each sale to the courier company, they say that the increased revenue and increased access to customers is worth it.

"Part of it is getting people who have not been to the restaurant to try our food," says Thomas Nguyen, owner of Houston's two Peli Peli eateries, which feature South African fusion. "It also allows us to engage more with existing customers."

Peli Peli uses both DoorDash and UberEats Instant Delivery—the former for various items on the regular menu and the latter to deliver multiple orders of a single dish that Uber promotes.

For three-unit Salvation Pizza in Austin, Texas, the decision to use third-party delivery operations brought an additional issue: The chain already has its own delivery drivers. "It did feel like a gamble when we did it, especially the impact it would have on our in-house drivers," says owner Michael Dinsmore, who acknowledges there was resentment at first. However, the drivers have other duties at the units and have not been impacted. Salvation Pizza uses Uber- Eats, Amazon, and Favor. "What we get through them is bigger orders and our delivery business is growing," Dinsmore notes. "The more people we reach, the better it is for our brand."

Atlanta's Publik Draft House and the two other restaurants that are part of the Grazie Hospitality Group have signed delivery agreements with at least a half-dozen services. "They're pretty much the same, except how they make their money," says co-owner Eddie Johnson. "One will tack on a fee for the consumer, while some will take a percentage of the sale. Some add on a delivery charge."

Grazie has been diligent in controlling which menu items can be delivered and how to prepare them. With hamburgers, for instance, buns coated with extra butter "create a seal so the burger doesn't make it soggy. And the pickles and tomatoes are separate."

Putting Food Delivery to the Test

By Jessica Burrell

Putting Food Delivery to the Test

We have entered a new age of food delivery in America. More people are choosing their meals based on ease, convenience, mobile ordering and speed while sacrificing taste and quality for convenience. Despite the delivery evolution, many restaurants and food providers are failing to meet the rising demand for convenient and high quality food delivery experiences. So how are they really doing?

In order to evaluate the current state of food delivery, Sabert recently conducted the first-ever Food Delivery Pressure Test during the 2015 National Restaurant Association (NRA) show in Chicago. The test was a way of taking a valuable snapshot of the state of food delivery at the biggest food show in the world.

The test was designed to assess how four types of food establishments—from fast food to five-star restaurants—performed in three distinct categories of delivery service—food packaging, delivery service and food quality.

The team of Sabert delivery analysts placed orders at exactly 5 pm on Friday, May 15—the height of the NRA rush hour. The restaurants evaluated included a high-end steakhouse, a dim sum restaurant, an Italian restaurant and an American restaurant. In order to cover the full spectrum of delivery issues while remaining fair, the Sabert team ordered a variety of similar food types at a range of temperatures simultaneously using phone as well as mobile and web applications.

As the deliveries came in, the Sabert evaluation team recorded the time it took to deliver, and conducted immediate and complete inspections of the packaging, presentation, quality and taste of the food itself. Once all deliveries had been made, the data was recorded, and the results were analyzed. While the Sabert evaluation team didn't make the test an easy one by any means, the results they found were equally as shocking as they were disappointing.

From late service and leaking foods to soggy entrees and underwhelming sides, the test showed that a majority of food providers are consistently falling short on even the most basic delivery processes. Many of the assessed restaurants used packaging that was either not designed to withstand temperature-specific foods or ill equipped to contain specific food types. In more than one instance, a restaurant delivered hot and cold foods in a single delivery bag, causing cold foods such as sushi and kale salad to reach 80 °F and 108 °F, respectively.

While there were a number of key failure points seen in the test, restaurants can address and solve each of them with some minor adjustments to how they provide delivery service.

Issue: Placing Hot and Cold Foods in Close Proximity

If someone orders a leafy salad, he or she likely expects it to be served cold. Similarly for soup orders, the expectation is that it will be served hot. A common mistake among many food providers was delivering hot and cold foods in close proximity (i.e., same delivery bag or packaging container). In more than one instance, a restaurant delivered and stored hot and cold foods in a single delivery bag, causing foods to reach unsafe and/or unappetizing temperatures.

Solution: During delivery, cold and hot foods should always be in separate packaging and in separate delivery bags. This ensures all foods delivered mimic restaurant quality and are served at their appropriate temperature.

Issue: Partially Filled Packaging and Inappropriate Packaging per Food Type

While having fewer packaging options available may save space and money for a business, improper food packaging caused food orders to appear unfulfilled. Improper packaging sizes led some food portions to appear smaller than anticipated, creating the impression of low value. Additionally, packaging used for fried foods that was ill equipped to handle the condensation caused by frying led to soggy foods with poor texture.

Solution: Restaurants should have a variety of packaging options to fit multiple needs. Using fully filled packaging creates a greater impression of value and increases the visual appeal of foods, as well as the overall delivery experience.

Equally as important for food providers is ensuring that packaging is appropriate for certain food types, including wet, fried, messy, hot and cold foods, which will increase the quality of the food upon its arrival to the customer. Restaurants that have packaging engineered for all food types will be better prepared for menu additions and seasonal food changes.

Issue: Unprofessional Delivery Staff

As more and more restaurants begin to outsource their delivery service to companies, many are losing control of the delivery experience once the food leaves the restaurant doors. Though it opens up service to a much broader customer market, outsourcing delivery to unreliable external delivery persons led to varying satisfaction levels with overall customer service during the Food Delivery Pressure Test.

Solution: Ensure all delivery partners are aware of brand and service expectations prior to any food delivery. This includes both internal and external employees and partners. Delivery partners can be seen as an extension of the brand, and it is important to choose them wisely. If an external delivery person does not live up to brand and restaurant expectations, notify the delivery service provider of any issues.

Issue: Inaccurate Delivery Estimates

Providing customers with an estimate of how long they can expect to receive their food is a great way to ease any concerns with long wait times, especially during high volume hours. During the Food Delivery Pressure Test, restaurants that did not provide a delivery estimate or those that were late upon arrival created frustration with their service. These restaurants scored lower than those that both provided an estimate and arrived early or on time.

Solution: Always provide a delivery time estimate and ensure that the delivery person transports foods within the timeframe. If a restaurant or the delivery person knows the food will be arriving late, placing a call or text message to the customer to notify him/her of the delay can not only temper concerns but often creates a more enjoyable experience and lets the customer know their satisfaction is a priority.

Issue: Unbranded Packaging and Delivery Materials

Restaurants and eateries that provided packaging and delivery bags with branded images increased the overall food delivery experience and were seen as higher-end establishments, regardless of food quality. In addition, branded attire for delivery staff conveys a more upscale experience.

Solution: Use branded images and logos on delivery bags, food packaging and, if possible, on the delivery person's attire. While branding food packaging may require high-quantity orders and large monetary investment that some establishments cannot meet, stickers and paper bands provide a branded experience at a minimal cost. By investing in a branded delivery experience, customers are more likely to remember brands for quality and have a positive association with the establishment.

For any restaurant or food establishment new to the delivery market or for those who have concerns about the current state of their delivery, it is important to constantly monitor customer satisfaction and evaluate where adjustments should be made. The solutions listed above can provide a boost to existing delivery service or a jump start to those interested in reaching this untapped customer base.

As delivery trends continue to rise, it is becoming clearer that packaging and delivery service can impact the overall delivery experience as much as or sometimes more than the food quality itself.

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