



## **CCFN ALERT newsletter – Q3 2019**

*September 2019*

### Chairman's Column

#### **With Steady Work and Dialogue, A Way Forward**

We were so pleased to recently share with you the successful agreement with the Consorzio Tutela Mozzarella di Bufala Campana (described in an article below), which recognizes and respects the Consorzio's specific product of origin while also respecting the common name "mozzarella". This agreement, forged after repeated meetings and productive dialogue between CCFN, the U.S. Dairy Export Council (USDEC) and the Consorzio and culminating in a signing ceremony in Italy last month, will prevent countless wasted hours and resources that might have been spent battling over the term "mozzarella" in various countries around the world.



CCFN, USDEC and the Consorzio also agreed to cooperate in sharing the goals of the agreement with U.S., Italian and European government officials, a point that helps smooth the way for better trade relations in a time when such progress is very welcome to producers everywhere.

Obviously, we hope we can replicate this success for other geographical indications (GIs) and common terms, and why not? There is a place for both GIs and products bearing generic names, which can be offered side by side in the marketplace to discerning consumers around the globe.

CCFN has recognized the specific nature of a legitimate GI, as it has with any good-faith, legally trademarked product. This agreement reconfirms that generic names can and must also continue to be recognized and respected.

We thank our Italian colleagues for constructing this agreement with us and look forward to other such equitable arrangements with GI holders.

*Errico Auricchio*

CCFN Chairman

President and Founder, BelGioioso Cheese

## CCFN, U.S. Dairy Industry and Consorzio Tutela Mozzarella di Bufala Campana Sign Historic Agreement on GIs and Common Names, Providing Transparency for Consumers

The Consortium for Common Food Names (CCFN), the U.S. Dairy Export Council (USDEC) and the Consorzio Tutela Mozzarella di Bufala Campana have signed an historic agreement that CCFN hopes will pave the way for a new dialogue on the protection of products of origin in the United States and in global markets – including those bearing geographical indications (GIs), while respecting the rights of companies to produce and market products bearing generic names. The new agreement provides greater support for robust protection in the United States and around the world for the Mozzarella di Bufala Campana Protected Designation of Origin (PDO), while unequivocally establishing the free use of the generic term "mozzarella" to indicate a type of cheese. Consorzio President Domenico Raimondo, and CCFN Executive Director and USDEC Senior Vice President Jaime Castaneda, signed the agreement August 5 in Caserta, Italy.



The agreement recognizes the distinctive character of the name Mozzarella di Bufala Campana PDO and its territory of production. It also recognizes the rights of all to freely use the term “mozzarella” to describe a cheese produced according to the definition provided by the Codex Alimentarius or the U.S. Food and Drug Administration Standards of Identity.

“This agreement will bring clarity to American and global consumers while protecting their ability to choose from a wide selection of high-quality cheese products,” Castaneda said. “This is an important step toward furthering conversations to protect the rights of common name producers as well as good faith GI holders. We look forward to continuing to work with our Italian colleagues to build upon this foundation of mutual respect for our respective food and wine industries.”

The United States is the largest non-EU export market for Mozzarella di Bufala Campana, making this agreement a significant step towards protecting both valid GIs and the use of common food names. In addition, Raimondo and Castaneda sent [a joint letter](#) to the European Commission and to the U.S. and Italian governments asking that they



*(left to right): CCFN Executive Director Jaime Castaneda, CCFN Chairman Errico Auricchio, President of Consorzio Tutela Mozzarella di Bufala Campana Domenico Raimondo, Assolatte General Director Massimo Forino, General Director of Consorzio Tutela Mozzarella di Bufala Campana Pier Maria Saccani.*

honor the agreement and support efforts to protect both the name Mozzarella di Bufala Campana and the free use of the term mozzarella in markets across the globe.

“We have embarked on the path of discussion with the main organizations in the sector in the USA, with the aim of listening to each other's needs and addressing them in an operational, pragmatic way, and without prejudicial attitudes,” said Raimondo, who is also president of the Association of Italian Cheeses DOP (AFIDOP). “Our staff have been determined and worked diligently and this agreement is the first fruit of a collaboration that we hope will be extended to other cheeses and bring, if anything, the resolution of long-standing problems. We have sent a message to politics: we must start from this dialogue; it is the starting point for relaxing relations. Only in this way can we avoid closures and protectionist policies.”

The summit between the Consorzio, CCFN and USDEC was also attended by the Consorzio’s General Director Pier Maria Sacconi, the Director General of Assolatte (Italian dairy processors association) Massimo Forino and CCFN Chairman Errico Auricchio.

### **WIPO GI Symposium: CCFN Makes Common Names Part of the Dialogue**



*CCFN Representative Allen Johnson addresses the audience at WIPO's GI Symposium in Lisbon.*

CCFN continues its steady engagement with the World Intellectual Property Organization (WIPO), most recently related to the structure and process surrounding the Geneva Act of the Lisbon Agreement (2015), which may have a significant impact on how geographical indications (GI) are vetted and registered in multiple nations. To date, there are 29 members of the Lisbon Agreement, and the EU is expected to join soon. So far, there have been 1,012 GI registrations in the international register, which is administered by WIPO, with many more expected.

As a result of CCFN’s outreach, WIPO also included a panel on GIs and common names at its biennial Worldwide Symposium on Geographical Indications in Lisbon this summer. The symposium is considered the leading event in the global discussion of GIs. According to the [World Trademark Review](#), this year’s event was well attended by government representatives, international intergovernmental and non-governmental organizations, and individual participants from more than 60 countries.

CCFN representative Allen Johnson robustly advocated for the rights of common name users on the GI/common names panel. The panel began with oriGIn Director Massimo Vittori reviewing the principles governing protection of GIs in most national laws and international law, and citing the availability of the opposition process to address concerns regarding generic names.

Johnson responded by citing the rights of producers to use generic names, and the damage to consumer choice in the marketplace when GI holders can monopolize a name despite decades of a term being in common usage. Johnson stressed that it is possible to find common ground, but only if the rights of common names users are respected and there are objective legal avenues to oppose and refuse registration of GIs that have become generic.

"It has become increasingly clear that international organizations such as WIPO are a major focus of the EU GI agenda," Johnson said after the conference. "It is important that CCFN engages in this forum just as we do on the bilateral, regional and domestic legal and negotiating fronts. By doing so, we can get our message out about the importance of common names and the need to protect the rights of common name users around the globe."

### **Safeguarding Common Names in Key Markets Around the World**

As anticipated, 2019 continues to be a busy year for CCFN in defense and education in the area of generic names. CCFN has filed 13 new opposition this year to preserve common names, most which are still pending. Here are some details on work conducted so far this year.

#### **In the United States:**

- **Gruyere:** The oral hearing within the U.S. Patent and Trademark Office (USPTO) to consider the Swiss application for a "gruyere" trademark took place in June; a decision is expected by late September. CCFN has led the work to oppose this trademark over the past three years, given widespread use within the United States of the common name and precedent concerns related to its approval.
- We also recently engaged with **Congress and the Administration** in relation to House and Senate hearings that included the topic of GIs. In those hearings, U.S. Trade Representative Robert Lighthizer touted the GI elements within the U.S.-Mexico-Canada Agreement (USMCA). CCFN staff also met with Senate Finance Trade Committee offices and committee staff, as well as House Agriculture Committee staff to discuss the need for greater Congressional focus on GIs, including through the pursuit of a hearing.



#### **In Asia:**

- CCFN filed comments regarding **China's** GI Foreign Product Protection Measure to stress that China must safeguard common names as new GIs are registered. We also filed supplementary arguments in ongoing efforts to oppose trademarks that would include "**cheddar**" and "**emmental**", as well as oppositions against two trademark applications that

would impact the use of the term “**bologna**”. In addition, CCFN replied to an invitation by the Chinese government to engage in mediations with the EU regarding several pending EU GI applications, but the EU has rejected China’s proposal for mediation.

- In **Vietnam**, as a result of CCFN’s work in challenging local trademark applications, disclaimers were included in the filing so that the generic terms “**cheddar**” and “**mozzarella**” will not be monopolized.
- In **Taiwan-Hong Kong**: CCFN worked through the International Trademark Association (INTA) to submit comments to inform the dialogue regarding GIs in a Taiwan-Hong Kong free trade agreement with EU.

In **Latin America** CCFN is conducting ongoing legal efforts to safeguard such terms as **parmesan, cheddar, edam, asiago and gorgonzola** by opposing overly broad trademark applications, as well as Italian industry groups and EU efforts to confiscate terms through a nation’s trademark system. For example:

- In **Argentina** CCFN safeguarded the term “**edam**” this year by opposing a trademark application filed by a local company.
- In **Brazil**, CCFN is monitoring a trademark application from a local company to ensure there is no threat to the generic name “**cheddar**”.
- In **Mexico**, the nine constitutional challenges (“amparos”) that CCFN filed in last 2018 regarding the Mexican Ministry of Economy’s lack of due process for certain GIs have been advancing. To date only one amparo has been rejected by the court. The process is ongoing and CCFN is awaiting final decisions on the resolutions.

Similarly, in **Australia, New Zealand, Russia and South Africa** so far this year:

- CCFN worked to safeguard **asiago, gorgonzola, provolone, parmesan, mozzarella, cheddar, feta** and other generic cheese names by filing oppositions to trademark applications, collaborating on submissions as part of that nation’s trade negotiations with the EU, or requesting disclaimers to trademark applications so that the generic terms are preserved.

**Also...**

### **EU’s Claim to Sparkling “Prosecco” Falls Flat in Australia**

Australian wine producers and enthusiasts are balking at the European Union’s (EU) attempt to include “Prosecco” in its list of more than 1,500 product names it wants exclusive rights to under its \$100 billion bilateral trade agreement with Australia. (That list also includes popular cheeses such as parmesan, feta, haloumi, brie, camembert, pecorino and edam.) But research by law professors at Australia’s



[Monash University](#) finds that Prosecco has been the name of a grape variety since the 18th century – and probably much earlier, and that the EU’s protection of Prosecco as a GI would likely run up against World Trade Organization rules.

Until 2009, Prosecco was universally regarded as a grape variety as well as a type of wine. But 10 years ago, the EU granted the name Prosecco to Italy as a geographical indication (GI), so the Italians changed the name of the grape to “Glera”. At the same time, leading Italian and international wine authors and growers confirm that Prosecco is the name of a grape variety, and the EU expressly stated in a 1994 agreement with Australia that Prosecco is a grape variety. Prosecco wine has been produced in Australia since the early 2000s, after Prosecco grape vines were imported from Italy in 1997.

“If Prosecco is the name of a grape variety and not a geographical indication, the prohibition of its use in trademarks on Australian Prosecco would, in our view, be likely to contravene Article 20 of the TRIPS Agreement, and Article 2.1 of the Technical Barriers to Trade Agreement,” said Caroline Henckels, one of the Monash University authors. “The Australian government should not jettison the commercial interests of Australian wine producers without a detailed consideration of the evidence that supports, or fails to support, the assertions of the EU. Trading dubious geographical indications for access to European markets is a shortsighted approach that will negatively affect Australian industry.”

If the EU is successful, it could cause significant damage to Australia’s wine industry. Australian Prosecco wine exports are worth \$60 million annually and are predicted to rise to \$500 million over the next decade. Australian publication [FoodProcessing.com.au](#) reports that according to industry trade organization [Australian Grape & Wine](#) (AGW), Prosecco domestic wine sales of Prosecco have increased by over 100% in the past two years.

“It’s great to see Prosecco being embraced by Australian producers and consumers,” AGW Chief Executive Tony Battaglione told FoodProcessing.com. “Australia has been producing great wine from Prosecco grapes for years, which is why we’ve been working so hard to maintain Australian producers’ rights to grow the variety.”

The European Commission tried to register Prosecco as a GI in Australia in 2013, but it failed after the AGW (then the Winemakers’ Federation of Australia) argued successfully that it was the name of a grape variety.

“We have been disappointed by the efforts of the EU to protect their producers against any competition through subsidies and cynical attempts to create GIs of grape varieties,” Battaglione said. “There’s no question about Australian producers’ rights to produce, label and sell Australian Prosecco. Maintaining these rights and ensuring the investments growers and winemakers have made in the variety are on solid ground all comes down to the outcome of our free trade agreement negotiations with the EU. We’ve already won the fight in Australia from a legal perspective back in 2013, and we are delighted the Australian government continues to honour this court ruling and back Australia’s grape growers and winemakers.”

***And this...***

### **How Low Can They Go? Grassfed Beef as a GI?**

A recent tweet caught our eye from John Clarke, Director of International Affairs at the European Commission DG Agriculture, where Clarke relates his proposal to the Irish beef federation that they seek GI status for grassfed beef. “They didn’t believe it but now they do and it’s coming!” he cheers. One follower responds, “I imagine other countries around the world with predominantly grassfed herds might have a question or two 😊”.



**###**