

CCFN ALERT newsletter - Q2 2019

June 2019

Chairman's Column

A Trip to Italy

I am usually very comfortable when I have the good fortune to travel back to my native Italy, but on a recent trip I was a bit nervous. I had been invited to speak about CCFN and geographical indications at a meeting that also featured a speaker from the Consorzio Tutela Grana Padano – one of the Italian consortia that is fiercely proud and protective of the geographical protections for its cheese. And of course with the meeting taking place in Cremona, Italy – the heartland of GI territory – I was not sure how I would be received!



However, the group was very gracious and welcoming, and in the end we had what I believe was a productive conversation that helped bridge the gap between protection of legitimate GIs and the use of common names.

I started by pointing out that all of us have a very important thing in common: we are passionate about excellence in cheesemaking. I spoke a little about my own company, and the pride in our Italian roots as well as the success of our business in Wisconsin. And then I invited a discussion on competition.

Consider this: It is better for companies like mine that the cheesemakers in Italy continue to make and market excellent products – it keeps me working hard to compete. And the reverse is also true: It is better for the Italian cheesemakers that companies in Wisconsin, Latin America, Australia – or wherever else in the world – make excellent cheeses. Why? Not just because competition makes businesses perform better, but also because all of these companies are helping grow the overall market for these cheeses. If more and more people try grana cheese throughout the world, that market becomes much larger; then people look for the very best grana and choose the highest quality and value they can find – and Grana Padano will doubtless be a brand they'll be interested in.

Yes, having a GI on that cheese can help distinguish it for its particular character and quality. But common name cheeses are helping grow the market for everyone. Competing fairly, on quality and value, is the key goal of the CCFN, which includes recognizing GIs in tandem with safeguarding common names. In this issue of the newsletter you'll see an article about my frustration with the EU's refusal to allow into its market U.S. cheeses with the generic names asiago, feta, fontina, gorgonzola, grana, muenster, parmesan and romano. Meanwhile, the United States allows EU companies to sell cheeses by these names within the United States. This is not a fair and equitable situation, and it does not encourage cheesemakers to compete as they should, on quality and value.

I would like to thank my Italian hosts again, and I look forward to continuing a productive conversation that begins with a respect for each other's products in a global marketplace that still holds much room for growth!

Errico Auricchio

CCFN Chairman

President and Founder, BelGioioso Cheese

CCFN Succeeds in Defending Asiago Trademark Rights in U.S.

In April, after a protracted, years-long battle to try to trademark the generic term "asiago", and steady opposition efforts by CCFN, Italy's asiago consortium (Consorzio Tutela Formaggio Asiago) abandoned its application for a U.S. trademark for exclusive use of the term "asiago" in the United States.

After the consorzio filed its current application in 2012, CCFN met with the U.S. Patent and Trademark Office (PTO) and presented complete information illustrating how widely the term is used. After this meeting, the PTO rightfully refused the application on the grounds that "asiago" is a generic.



Over the past few years, Italy continued the fight, coming back with appeals to try to get that decision overturned. At the same time, Italy pursued an effort to cancel a longstanding trademark owned by Schuman Cheese – a CCFN member based in New Jersey – for the term "Asiago Cello" ("Cello" is Schuman's flagship brand).

As the case proceeded, CCFN continually confirmed that PTO had all the key facts readily available to support its correct ruling. In April the consorzio dropped its effort to register "asiago", as well as its attempt to cancel the "Asiago Cello" trademark – both victories for CCFN members. CCFN also believes that this decisive failure to monopolize this generic term will hamper any future efforts to restrict the use of "asiago" in the United States.

CCFN Chairman Urges the White House to Address Cheese Trade Deficit Driven by GI Abuses

The Trump Administration should take measures to address the inequity in cheese sales opportunities between the United States and the European Union, especially given the EU's anti-trade practice of abusing geographical indications (GI) policies to monopolize generic cheese names as a means to shut out competition in its home market, as well as around the world. That is the message sent in a letter to President Trump in May by CCFN Chairman Errico Auricchio.



“The United States is an extremely profitable dairy market for the EU; we must leverage that power in correcting this deeply frustrating inequity,” Auricchio writes. “I urge you to utilize all available tools to remedy this situation. Let us at least consider imposing the same restriction on them that they do on us: require that they not sell cheeses by these names into our market, as long as we are locked out of theirs.”

The United States is Europe's number one export market for cheese, totaling approximately \$1 billion in annual sales, but the EU restricts competition from the United States in many cheese categories, contributing to a massive \$1.6 billion U.S.-EU dairy trade deficit, the letter states.

“Europeans can sell their asiago, parmesan, feta, etc., in Wisconsin, but cheesemakers like me are blocked from selling Wisconsin cheeses by the same names in Europe,” Auricchio writes, noting that it is “truly aggravating” that “while we are shut out of their market, which includes some of the highest cheese-consuming nations in the world, the United States allows EU companies to sell their cheeses with these names into our lucrative U.S. market – competing with us for our own U.S. consumers.”

On the same day Trump received Auricchio's letter, Senator Chuck Grassley (R-Iowa) published an opinion piece in [Politico](#) that also urged action on GI abuses as an unfair barrier to trade. Senator Grassley is the Chairman of the Senate Finance Committee and also a member of the Senate Agriculture Committee.

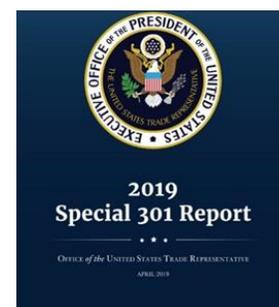
“The EU has sought to exclude U.S. agricultural products from European and third-country markets through the use of labeling rules known as geographical indications,” Grassley wrote. “By preventing U.S. agriculture producers from using commonly accepted names, geographical indications impede the ability of U.S. producers to market their products abroad.”

In addition, the [New York Times](#) quoted Auricchio's letter in a May 22 article about issues complicating trade between the United States and the EU.

One of the main ways the EU blocks U.S. competition is by preventing nations outside the EU from marketing cheeses within Europe using common names like “parmesan”, which the EU says are protected by GIs. The United States has long maintained that protection of a GI like “Parmigiano Reggiano” should not be extended to encompass generic terms like “parmesan” that have been used by cheesemakers around the world for generations. The full text of Auricchio’s letter to President Trump can be found on the [CCFN website](#).

CCFN Commends U.S. Denunciations of EU’s GI Abuses, Calls for U.S. Government to Secure Commitments from Trading Partners

The United States government in April rebuked the European Union for its abuses on geographical indications (GI) policies, describing the adverse impact on U.S. companies’ access to EU and other markets when the EU claims sole rights to use generic food names. In its annual Special 301 intellectual property report, the U.S. Trade Representative’s Office (USTR) said it will work to ensure that U.S. trading partners do not make bilateral GI agreements with the EU that violate prior rights of U.S. exporters or otherwise undermine a producer’s rights to use generic terms.



“For too long the United States has tolerated its trading partners’ disregard of their market access concessions and their acquiescence to EU GI demands that have negatively impacted suppliers from the United States and others throughout the New World,” said CCFN Executive Director Jaime Castaneda.

CCFN Chairman Errico Auricchio added, “With this report the USTR sends a strong message on the EU’s misuse of GIs to erect barriers to trade; to remedy the problems, we urge the Administration to promptly and forcefully follow through by securing binding commitments from U.S. trading partners that preserve market access rights for exporters.”

Overall, the report states, the EU GI agenda remains “highly concerning, because it significantly undermines the scope of trademarks and other IP rights held by U.S. producers and imposes barriers on market access for American-made goods that rely on the use of common names.” As part of its trade agreement negotiations, “the EU pressures trading partners to prevent all producers, other than in certain EU regions, from using certain product names, such as fontina, gorgonzola, asiago, or feta. This is despite the fact that these terms are the common names for products and produced in countries around the world.”

Castaneda called on the USTR to build further upon the positive precedent established in the USMCA Side Letter Agreement with Mexico, which affirmed market access rights on a subset of common product terms.

Prior to the report's publication, CCFN filed extensive comments to the USTR expressing concern about the ongoing attack on manufacturers of foods with common names as the EU continues to pursue its GI agenda in bilateral and regional trade deals. CCFN also testified at a USTR-led hearing on those issues to further call USTR's attention to these challenges.

EU Considers GI for Generic Term "Havarti"

CCFN is watching carefully as the European Union (EU) considers approving a controversial Danish application for a geographical indication (GI) for "havarti" cheese. In late May the EU's Product Quality Committee failed to reach a qualified majority in favor of approving the GI. However, the EU can now choose to act on its own regarding the registration. Havarti is produced in several EU nations, including Germany, Spain and Poland. Those countries all objected to the application when it was filed, as did the United States, Australia and New Zealand.



The name "havarti" does not refer to any geographic region in Denmark, and most havarti cheese is produced outside of Denmark – including by Danish company Arla Foods in Wisconsin. The registration would block any producer outside of Denmark from selling cheese by that name within the EU and would add "havarti" to the list of popular food names such as parmesan, feta and chorizo that the EU is attempting to monopolize in global trade. CCFN and other organizations in the EU, Latin America and Oceania suggested that an acceptable, legitimate GI would include the geographic component of the name, such as "Danish Havarti"; this mirrors existing GIs such as "Orkney Scottish Island Cheddar", a specialty type of cheddar cheese.

"Havarti has been produced in the United States for many years by talented cheesemakers. The name 'havarti' is clearly a generic term," said Dominique Delugeau, Senior Vice President of Specialty Cheese and International Trade at Saputo Cheese USA Inc. (see UnCommon Hero feature in this issue). He noted that, "Within Europe there have been many variations of havarti made. In fact, the true original smear rind Danish havarti for the most part has been replaced by a style of havarti for large-scale production. Why should this deserve a GI?"

Havarti is also one of 12 cheeses registered in the Codex Alimentarius international standards. The EU and Denmark actively participated in and approved of "havarti" in those standards, a process that clearly defines the method of production and generic name for those cheeses.

Also...

Italian Consortium for Mozzarella Agrees to a Disclaimer in United Arab Emirates (UAE):

Following an opposition filed by CCFN to a trademark application for “Mozzarella di Bufala Campana” in the UAE including the generic term “mozzarella”, the Italian consortium for the GI has agreed to including a disclaimer on the application that includes an acknowledgment that “mozzarella” is a generic term. This term is one of the most widely used generic cheese names, making its preservation critical to many CCFN members and their customers all around the world, including in the cheese-hungry Middle East.

CCFN Files Comments on EU-Chile Free Trade Agreement: CCFN has filed an opposition submission in a preliminary process for GI registrations in connection with negotiations on the EU-Chile Free Trade Agreement. CCFN opposed any restrictions on the following 26 terms included in the EU’s requested list, urging that they remain generic in Chile: asiago, black forest ham, bologna, brie, camembert, chorizo, edam, emmental, feta, fontina, gorgonzola, gouda, grana, gruyere, manchego, mortadella, mozzarella, munster, neufchatel, pancetta, parmesan, pecorino, prosciutto, provolone, romano, and salami.

Dual Nationality Pigs Stir Up the Mud in Parma: Italian police recently seized 20% of Prosciutto di Parma and San Daniele Prosciutto production as counterfeit, according to an Italian television [investigative report](#). Reporters claimed that one out of three of the prosciutto products is likely counterfeit, because while the pigs used are born and reared in Italy, they are genetically derived from non-PDO (protected designation of origin) Danish duroc pigs. The Danish pigs apparently produce a leaner product that is more in demand by consumers. Police forces were joined by the ministry of agriculture in seizing about one million legs of raw ham, worth about 100 million euros.



CCFN on the Move: CCFN representatives have been actively spreading the word on the importance of safeguarding common names. In the past few weeks, CCFN Executive Director Jaime Castaneda was in Mexico City for a meeting of the Pan-American Dairy Federation (FEPALE), and also met with Mexican government officials to discuss GIs. Castaneda also recently traveled to Southeast Asia, where he met with a variety of officials and companies in Singapore and Indonesia to discuss common names and GIs. In Vietnam, Castaneda gave a presentation on common names to Vietnamese government officials and local intellectual property lawyers at an event organized by the International Trademark Association (INTA), of which CCFN is a member. He also met



Jaime Castaneda (left) with representatives of FEPALE in Mexico City.

with the Deputy Director General of the National Office Intellectual Property of Vietnam and other staff members including the Director of the GI office, to request clarification on the registration of GIs when the EU-Vietnam free trade agreement is implemented.



Meanwhile, CCFN Senior Director Shawna Morris spoke at an INTA meeting in Boston in May, participating on a panel covering GI issues. CCFN representatives also participated in INTA’s GI committee meeting, which focused on changes to INTA’s GI resolution. Since last fall, CCFN has been providing input and advocating on the proper course for INTA’s revised GI resolution.

Morris also participated in a briefing session of examining attorneys at the U.S. Patent and Trademark Office (USPTO) at its headquarters in Alexandria, Va., in May. The event was organized by INTA’s government training committee and was focused on the cheese sector. Morris was joined by CCFN members Sabrina Hudson with Kraft Heinz and Chad Wiegand with Schreiber Foods in discussing GI issues. Following the briefing, USPTO staff were able to enjoy tasty examples of some of the great common-name cheeses produced by CCFN members, courtesy of donations from BelGioioso Cheese, Sartori Company and Schuman Cheese.



GI Madness: Who Owns the Bony Horse of La Mancha?

It appears that GI cheesemakers in Spain are seeking a monopoly on the use of windmills on cheese packages. And horses.

Specifically, the question is: Can a cheese made in La Mancha, Spain, the home of Miguel de Cervantes’ fictional, delusional knight Don Quixote, carry a depiction of Rocinante, our hero’s scrawny horse? Maybe not, according to a ruling last month of the European Union’s top judicial court, which said such an image may constitute “unlawful evocation” of Queso Manchego, which holds a protected designation of origin (PDO). The same goes for any graphical reference to windmills or the mad knight himself.



The decision concerns Industrial Quesera Cuquerella, a cheese company based in La Mancha that uses illustrations on its cheese products that triggered complaints from the Queso Manchego regulatory council, which uses a Don Quixote image as part of its logo. The Queso Manchego regulatory council twice took the company to court in Spain and failed. But the

European Court of Justice has now ruled in the council's favor. The judgment said the crucial factor was whether the Don Quixote images are "capable of triggering directly in the consumer's mind the image of the product whose designation is protected."

It is now up to the Spanish supreme court to make a final determination as to whether depictions of a bony horse near a windmill creates "conceptual proximity" with the protected Queso Manchego. The Spanish appeals court had earlier ruled that Don Quixote images evoked the region of La Mancha, but not necessarily the cheese covered by the PDO Queso Manchego.

What's more, Industrial Quesera Cuquerella began using images of Don Quixote's Rocinante horse years before the EU created its geographical indications scheme, according to its manager José Antonio Ruiz-Valdepeñas.

By the twisted logic of this ruling, could a GI council confiscate national landmarks in addition to generic terms? Could an Italian consorzio own the Colosseum, or a French GI capture the Eiffel Tower, simply by adding the image to its logo?

It's fitting that one definition of "quixotic" – a word coined from Quixote's epic tale – is "exceedingly idealistic; unrealistic and impractical."

UnCommon Hero

Dominique Delugeau, Sr. Vice President of Specialty Cheese and International Trade, Saputo Cheese USA Inc.

Dominique Delugeau has been in the cheese industry for more than 30 years and is passionate about specialty cheese. Throughout his career he has worked at several cheese companies – including with two other active CCFN members, Belgioioso Cheese and Schuman Cheese. Through acquisition, he has been with Saputo for 17 years.



His dedication to cheese in North America has included a stint as president of the American Cheese Society (ACS), the Wisconsin Specialty Cheese Institute (WSCSI) and the Cheese Importers Association of America (CIAA). He currently serves on the executive board of the International Deli Dairy Bakery Association (IDDBA).

As Senior Vice President of Specialty Cheese and International Trade for Saputo Cheese USA Inc., he helps direct a company that produces, markets and distributes a variety of cheeses for retail, foodservice and ingredient uses, including a broad line of mozzarella, American-style and specialty cheeses, such as ricotta, provolone, blue, parmesan, asiago, romano and goat cheeses.

“I’m most proud of the dedication of our plant people and the commitment in producing the best products possible,” Delugeau said.

While Saputo is a relatively new company – founded in 1954 – it was formed through the consolidation of many cheese companies with deep historical roots such as Frigo and Stella – brands that Saputo continues to develop as familiar names in specialty cheese – and brands that are paired with generic names of many styles of popular cheeses.

“If we were unable to use common names, our business would be at an extreme, unfair advantage,” he said. “These brands were established years ago by families who, like the Saputo family, emigrated from Europe and brought their passion and know-how to North America. They invested a lot of hard work and capital to build the name recognition we now have in the marketplace: Frigo Provolone, Frigo Asiago, Stella Parmesan, Stella Romano etc.”

Saputo Cheese USA Inc.’s parent Saputo Inc., is one of the top 10 dairy processors in the world, headquartered in Montreal, Canada, with more than 15,000 employees. It is the largest cheese manufacturer and leading fluid milk and cream processor in Canada, the top dairy processor in Australia, and the second largest in Argentina. In the USA, Saputo ranks among the top three cheese producers and is one of the largest producers of extended shelf-life and cultured dairy products. In the United Kingdom, Saputo is the largest branded manufacturer of cheese and a top manufacturer of dairy spreads and butters.

As an international company, Saputo imports “a fair amount” of specialty cheese from Europe, Delugeau said. “We believe in well-defined geographical indications (GIs), but we are certainly concerned about the stand the European Union (EU) has taken in the last four to five years on common names, and their attempts to claw-back use of these names in many countries. That is creating unfair global situations and undermining well-established businesses.”

The latest attack on those businesses is the EU’s consideration of approval of a Danish GI application for “havarti”.

“Within Europe there have been many variations of havarti made. In fact, the true original smear rind Danish havarti for the most part has been replaced by a style of havarti for large-scale production. Why should this deserve a GI?” Delugeau said.

“In addition, havarti has been produced in the United States for many years by very talented cheesemakers. The name ‘havarti’ is clearly a generic term,” he added.

“The Saputo promise is around seven pillars for corporate values, including a commitment to our people. Loss of business in our plants would be inevitable if Europe had its way on how it approaches GIs, which is one major reason we want to passionately protect common names.”

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