



2nd Quarter 2022

NEWSLETTER

Chairman's Column

In the second quarter of 2022, the U.S. government continued to partner with CCFN to lead the steady progress that is essential to defending our members' use of common names for food and beverages around the world. We are especially proud of, and thankful for, our close working relationship with the U.S. Department of Agriculture. Not only does USDA help fund a portion of our work, but we also team with them regularly, engaging foreign governments, sharing information on evolving developments, and providing them with our policy recommendations.

Often, our work feels like a complex chess match versus the EU, where every nation on earth represents one of the 64 squares on the board. In this relentless competition, we not only work to counter the EU's offensive efforts, but we must also simultaneously build defensive bulwarks, anticipating next moves while monitoring the entire board for opportunities and threats.



*CCFN Chairman
Errico Auricchio*

During this quarter, we have been active across that global chess board – monitoring GI activity in China, Malaysia, the Philippines, Mexico, Chile, Argentina, Australia, the EU, and many other nations, working to ensure your rights as producers are protected from the EU’s monopolization efforts wherever they occur. Yet this impressive list, and the stories below, are only a small sampling of our many initiatives aimed at rebuffing the EU’s monopolization campaign.

Of course, our work to counter the EU’s efforts differs from the game of chess in many key aspects, including our ability to enlist allies to our cause. That theme echoed across our second quarter as well. Below, you’ll read about our engagements with allies such as WIPO, INTA, numerous U.S. executive branch offices and the U.S. Congress.

We’ve also called on our government allies such as the U.S. Trade Representative (USTR) to strengthen their support for our essential work. We have implored the U.S. administration to work closely with us to develop a full-spectrum, long-term strategy for countering the EU’s campaign – a strategy that would replace USTR’s current, piecemeal efforts.

I will leave you with one final note. As you know, our program is partially supported by U.S. Congressional appropriations to the Market Access Program (MAP) and the Foreign Market Development (FMD) program. Their investments, paired with your private-sector support, are invaluable to CCFN as we race to reclaim global export markets.

To ensure Congress understands the value of programs like ours, CCFN and other MAP and FMD beneficiaries studied those programs’ return on investment. The numbers are astounding. For every single dollar invested in the various MAP and FMD programs, including CCFN, there is an over twenty times return in U.S. farm income leading to additional benefits that flow to our members around the world.

While CCFN is only one of dozens of MAP and FMD programs, we are incredibly proud to be among this impressive class, delivering outstanding value to you, our global membership.

Thank you again for your efforts and your continued support.

Errico Auricchio
CCFN Chairman
President and Founder, BelGioioso Cheese

USTR Incorporates CCFN Comments in Special Report

The U.S. Trade Representative (USTR) published its annual Special 301 Intellectual Property Report on April 27, drawing heavily from public comments CCFN filed January 31 concerning the global battle for common food names. USTR's Special 301 report is its flagship cataloging of IP-related trade challenges around the world and is used to set priorities for engagement with key markets on those topics. CCFN welcomed the report's prioritization of the importance of preserving market access rights for our members. CCFN's comments and the subsequent government report both highlighted the persistent and pernicious efforts by the EU to create non-tariff barriers to trade through the deliberate monopolization of common food terms in markets around the world.



USTR's report noted that, "As part of its trade agreement negotiations, the EU pressures trading partners to prevent any producer, except from those in certain EU regions, from using certain product names, such as fontina, gorgonzola, parmesan, asiago, or feta. This is despite the fact these terms are the common names for products produced in countries around the world."

CCFN continues to work with USTR, the U.S. Patent and Trademark Office, the U.S. Department of Agriculture, the Department of Commerce, and the Department of State to ensure our trading partners live up to their market access commitments under the WTO and bilateral trade agreements with respect to the use of common food and beverage terms.

CCFN Member USDEC Highlights Common Name Concerns to the U.S. Congress

CCFN founder organization and leading contributor, the U.S. Dairy Export Council (USDEC), testified before Congress on April 6, raising common food names concerns. USDEC president and CEO Krysta Harden spoke before the House Agriculture Subcommittee on Livestock and Foreign Agriculture in a hearing on the Trade title of the U.S. Farm Bill.



In her testimony, Harden called for language in the 2023 Farm Bill that would direct USTR and USDA to proactively negotiate terms to defend the use of common names through bilateral agreements, memoranda of understanding, and exchanges of letters. She also called on Congress to double funding for the Market Access Program (MAP) which provide a measure of financial support to help further CCFN's global activities.

In response to a question from Representative Dusty Johnson (R-SD) about the leading concerns tied to agricultural exports, Harden explicitly cited the EU's strategy of implementing unjust GI restrictions. She also called upon the administration to focus on protecting common food names to ensure a level playing field, echoing similar calls from Congress about the importance of proactive, robust efforts to safeguard market access rights globally.

USPTO Issues Guidelines Favorable to CCFN Members

CCFN has worked closely with the U.S. Patent and Trademark Office (USPTO) for years, engaging them on key issues and challenges common name users experience, including at times in the U.S. IP system. In late May, USPTO issued important guidance for its examination attorneys. It aligns the burden of proof trademark application examiners should use regarding generic considerations with the existing standard required for other



trademark refusals. The guidance to USPTO attorneys who review such applications clarifies the terminology and evidence standard at issue.

As USPTO noted in explaining the need for this change: "[In cases at the U.S.] Trademark Trial and Appeal Board, a party opposing or petitioning to cancel a registration on genericness grounds must prove its claim by a preponderance of the evidence. But to refuse applied-for marks as generic in examination, the USPTO previously used the term "clear evidence." As a result, there was confusion as to whether the standard for a third party to remove a presumptively valid registered mark from the register was lower than the standard for the USPTO to prevent the mark from being registered in the first place." This Examination Guide makes it clear that there is no statutory basis for applying a heightened standard.

In practice, CCFN expects that the new guidance will ultimately make it more difficult for the EU or its allies to attempt to monopolize generic names in the U.S. As such, it is a positive improvement that will maintain due process and a well-balanced IP system in the U.S.

Malaysia Issues New GI Regulations

Malaysia issued a new regulatory framework for geographical indications in March that takes steps toward balancing the interests of common name users with those of GI applicants. CCFN has engaged with Malaysia for a number of years on GI and common name policies, dating back to the extensive Trans-Pacific Partnership negotiations on the issue, and also worked with USPTO to help train IP officials in the region.



In broad terms, the regulation implements several commitments established in the IP Chapter of the CPTPP (which CCFN worked extensively to shape during years-long TPP talks) such as the existence of opposition and cancellation procedures, transparency regarding GI recognition applications, and grounds for denial of a GI that include the existence of common terms. In addition, GI applications must include a translation or transliteration of any additional terms for which protection is sought beyond use in English or Malay.

Although additional technical work and clarifications from Malaysian authorities remain important, the regulations appear to create a framework for balanced consideration of GI applications, provided that Malaysia insists on consistent use of the rules for all GIs.

CCFN Engages the Philippines on Proposed GI Policies

CCFN attended a virtual public consultation session with the Philippines on May 11 concerning its upcoming rules and regulations on GIs. The meeting included participants from the Philippines and other Southeast Asian countries, as well as from the Food and Agricultural Organization of the United Nations (FAO), U.S. Department of Agriculture (USDA), and the French Government.



The session focused on reviewing the written comments received by the Philippines IPO from the USG, CCFN, EU, INTA, FAO, and France. The stated goal of the Philippines is to build a GI protection system that ensures transparency, due process, and fairness; that provides for the protection of GIs, including by respecting prior trademark rights and not restricting the use of common names; and that does not provide automatic GI protection, including to terms identified in a trade agreement – elements CCFN supports.

CCFN had previously submitted comments on multiple prior versions of the Philippines' Rules and Regulations on Geographical Indications, requesting the regulations be clear, specific, and narrow in defining GIs while also including a clear process by which GIs are registered. In addition, CCFN has participated in meetings and briefings with the Philippine government on the development of the regulations over the past several years.

To help inform the present draft, CCFN submitted additional input to the Philippines ahead of a May stakeholder briefing session in which CCFN representatives also participated. As part of that feedback, CCFN weighed in on the proposed definition of “common terms” and offered suggestions for the process of revoking GI registrations where those names have been proven to be generic, among other topics.

WIPO Meetings Focus on CCFN Issues

CCFN's team attended the 45th Session of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), where substantive discussions centered on specific GI proposals. The U.S. delegation also proposed new discussions concerning the non-protectability of generic terms in compound geographical indications, a long-standing CCFN priority.



INTA Meetings Drive Cooperation Opportunities

CCFN is also helping steer another key association on issues important to members – the International Trademark Association (INTA), the world's leading voice on trademark topics. INTA conducts educational events on trademarks and GIs and is regularly consulted by governments around the world on the creation of relevant regulations.



In the first half of the year, CCFN has participated in several INTA GI Committee meetings, including the two meetings of the Expansion and Monitoring Subcommittee. There, CCFN volunteered to lead the effort to review and compile GI provisions in Free Trade Agreements (FTAs) globally and provide an analysis of conflicts and harmonization opportunities among FTAs.

Meanwhile, the INTA Governance Subcommittee held its kick-off meeting on April 12 and a second meeting on May 3. There, CCFN's Jaime Castaneda emphasized the importance of taking common food and wine names into account both when INTA addresses national governments concerning GIs and in the review of INTA's factsheet on GIs.

On May 3, the full GI Committee met in person in Washington, DC, during INTA's Annual Meeting. At that session, CCFN spoke about the importance of

protecting common food and wine names and taking into account generic names in the Committee's conversations about GIs. In this framework, CCFN also met with legal firms from different countries (such as Argentina, Australia, Brazil, Chile and Perú), who work defending the interests of CCFN and its members concerning the legitimate use of common terms in different jurisdictions. These meetings reinforced the coordination of CCFN's activities abroad.

CCFN Member Listening Tour of Wisconsin

The priorities of food producers who use common names are the unshakable foundation upon which CCFN builds its organizational goals. To ensure alignment between CCFN and its members, executive director Jaime Castaneda and senior director Shawna Morris met with several leading CCFN members in Wisconsin May 16-19.



The team visited facilities of a number of CCFN member companies and organizations. Their discussions centered around key issues including how to expand dairy trade and how CCFN could further support member company goals.



CCFN Engages Mexican and Latin American Allies, Sees Progress

CCFN Executive Director Jaime Castaneda traveled to Colombia in May where he helped lead the Pan American Dairy Federation's (FEPALE's) first in-person executive committee meeting since the pandemic. Castaneda serves as FEPALE's vice president, allowing him to help shape the organization's priorities to ensure CCFN's concerns receive appropriate attention in this critical international organization.



FEPALE's membership includes representatives from seventeen Latin American countries, many of which are also CCFN members. The organizations provides a forum for partnership and mutual efforts to combat common threats, including the monopolization of common names. While in Colombia, Castaneda also met with a broad range of local industrial and producer contacts to push for greater cooperation.

Castaneda's regional efforts continued in Mexico, where he joined leadership from the U.S. Dairy Export Council (USDEC) for a series of high-level meetings to discuss trade, non-tariff barriers and the protection of common food names. CCFN continues to work with our allies to press Mexico to complete implementing regulations that would protect common food names, an effort that began when CCFN helped to secure side letters to the USMCA on these issues. Castaneda met with the Mexican Ministers of Agriculture and Economy, representatives from Mexico's Congress and the US embassy -- including Ambassador Salazar.



In Mexico City, celebrating World Milk Day with CCFN member CANILEC

The EU's GI Proposal on Non-Agricultural Goods Seeks to Double Down on a Flawed EU GI Approach

The EU has unveiled new proposed regulations to create specific GI protections for a wide range of craft and industrial products. The proposal establishes the European Union Intellectual Property Office (EUIPO) as the primary governing body over the system and creates an appeals process for registration decisions. These moves are indicative that the EU is not backing off its GI strategy and is focused on increasing the range of products that have GI restrictions, a move sure to ensnare yet additional industries in challenges.



While the proposal clarifies that generic terms which form part of a compound name or term that is protected should retain their generic status, CCFN continues to advocate that additional common food and beverage terms should not be subject to GI restriction.

The process for non-agricultural GIs differs substantially from agricultural GIs in offering two opportunities to appeal, first at the EUIPO and then, if necessary, a second appeal opportunity with the EUIPO's internal Boards of Appeals before the General Court. CCFN will monitor how the system operates in practice to evaluate if it offers a less harmful approach to GI regulation than that led by the EU's Agriculture Ministry for food, wine and alcohol GIs at present.

Other GI News From Around the World...

The EU Considers How to Manage GIs Online for Domain Names

The EU published a draft proposal March 31 that strengthens its Geographical Indication (GI) framework for matters related to domain name disputes online. [Managing IP](#) reports on draft proposal's details. For a dispute claim to be successful, the domain name must be identical or confusingly similar to a registered trademark, the owner of the domain must have no legitimate interest in the name, and the registration must be in bad faith. CCFN opposes the proposal as pre-existing measures to protect GIs online are sufficient.

Spain: Quickly Ratify EU Trade Agreements with Chile, Mexico and Mercosur

Spanish foreign minister Jose Manuel Albares called on his EU peers on May 17 to ratify pending trade agreements with Chile, Mexico, and Mercosur. But obstacles remain, according to the [MercoPress](#). The article cites the call by the Chile constitutional assembly for a referendum on the country's foreign policy and trade deals. In Mexico, President Lopez Obrador has limited foreign investments. And in Brazil, which is a party to Mercosur, presidential elections will be held in October. There the two top parties have taken vastly different approaches to economic matters, foreign investment, and the role of government. CCFN continues to work on GI issues in Chile, Mexico, and the Mercosur to fight for the interests of common food name users in those markets.

About CCFN

The Consortium for Common Food Names is an independent, international non-profit alliance that represents the interests of consumers, farmers, food producers and retailers. We are working to protect worldwide the right to use common food names.

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