

## **CCFN ALERT newsletter – Q4 2019**

### ***December 2019***

#### Chairman's column

##### **As EU Scrambles to Erect Barriers to Competition, US Wins on Quality**

It was only a matter of time. Expert cheesemakers in New World countries have been matching the quality of Old World producers for many years. And now an American blue has been named the best cheese in the world in the most celebrated Europe-based cheese competition, open to entries from all around the globe (see article this issue).



This is a sweet victory for those of us – like me – who are tired of the argument that GI holders have the corner on excellence in an entire generic style of cheese – be it blue, parmesan or emmental. It's hard not to gloat just a little when the European Union's GI policy abuses have been all about closing competition under the false argument of superior quality due to origin.

CCFN has clearly maintained that legitimate GIs are an acceptable form of intellectual property. But the EU has made a mockery of its own GI program, creating a convoluted scheme that is something quite different from the original intent. This beast of a program is now mired in illogical bureaucracy and has strayed from serving those who are genuinely trying to protect compound names distinguished by a specific region, such as Mozzarella di Bufala di Campana. Consider the latest embarrassment: that the EU had the gall to approve a GI for "havarti" this fall, at the same time its trademark office rightfully rejected an attempt to trademark "emmental".

Such inconsistencies show that the European Commission is motivated by political pressures, creating a bureaucracy that twists and turns to avoid international standards, realities, and even at times their own regulations. In the process the EU hurts other producers within its own member states. Simply adding a geographic designation ("Danish Havarti") and respecting the generic term ("havarti") immediately makes the program more rational, efficient and sustainable, and eliminates opposition from folks like me.

Let's celebrate the fantastic American blue that won this year's highest cheese honor. And let's keep the heat on the EU for its absurd schemes tied to GIs, which result in confusion among consumers and distract from the quest toward true excellence in today's global marketplace.

*Errico Auricchio*  
*CCFN Chairman*  
*President and Founder, BelGioioso Cheese*

### **American Blue Takes the Cheese Crown in World Cheese Awards**

A blue cheese produced by Rogue Creamery in Oregon – “Rogue River Blue” – beat out 3,800 entries from 42 countries in October to take top honors at the 2019 World Cheese Awards in Bergamo, Italy. It's the first time an American cheese has been named best in the world in the esteemed international competition.



*photo credit: Tim Johnston Photography*

The competition attracted cheese producers from around the world – many of whom use common names for their cheeses. The top 16 winners featured cheeses from the United States, Italy, Spain, the Netherlands, Japan, Switzerland, France and the United Kingdom. Cheeses were shipped from as far away as Australia, Chile, Russia and South Africa; Japanese cheesemakers also made their debut at the competition, following Japan being added to the list of countries permitted to export dairy products to the EU earlier this year.

### **EUIPO Agrees “Emmental” is Generic; Denies Trademark Request**

The European Intellectual Property Office (EUIPO) has denied a request from Emmentaler Switzerland to trademark the term “emmental” or “emmentaler” (in German) aligning with CCFN’s objections to the application. The Swiss group filed its initial request in December 2017 for protected designation of origin status for emmental/emmentaler. CCFN filed a submission registering opposition to restricting the name and insisting on the need to preserve the generic status of the term, which is also a standard under the international Codex Alimentarius.



Last fall the European Commission noted that it was “confident that the EUIPO in assessing the application in question, will fully take into account the fact that the term in the EU is considered to be generic and is contained in a number of EU geographical indications protected as compound names (e.g. ‘Emmental de Savoie’, ‘Allgäuer Emmentaler’).”

### **CCFN Participates in GI Sessions at WIPO Meeting in Geneva**

CCFN participated in several key sessions in November at a major geographical indications (GI) meeting of the United Nations World Intellectual Property Organization (WIPO), where CCFN was able to leverage its new “Observer” status (see news item below). Held in Geneva, the event was the biannual meeting of the influential Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT). Attendees included more than 100 country delegations, mostly representatives of patent and trademark offices, and also included intergovernmental organizations such as the World Trade Organization.



In addition to monitoring the proceedings, CCFN representative Frank Hellwig participated in two sessions: one on GI issues related to trademarks that included a presentation by the U.S. Patent and Trademark Office on the “Evaluation of Genericness”; and the other a side event hosted by the International Trademark Association (INTA). At the latter session, Hellwig was one of four presenters and focused his remarks on “Common Names Protection in the Implementation of GI Protection Regimes”. Hellwig pointed out that while the EU claims not to be interested in monopolizing generic terms, history suggests otherwise. He made specific reference to the recent protections for “havarti” in the EU despite the fact that most havarti cheese is made outside of Denmark and a Danish havarti manufacturer produces it in the United States. He noted that too often countries’ GI decisions seem not to be determined by in-market realities, but more by political pressures.

### **EU-China GI Deal May Have Limited Impact on Common Name Users**

CCFN expects the on-the-ground impact to be limited from a geographical indications (GI) agreement last month between the European Union (EU) and China. Several of the terms within the 100 GIs listed as part of the agreement are not new restrictions and were already registered in China through its own GI or trademark system. These include asiago,



gorgonzola, Grana Padano, and West Country Farmhouse Cheddar (no restrictions currently exist on the common terms “grana” or “cheddar”). Of the four remaining GIs of interest to CCFN members, the agreement fails to expressly award the EU with exclusive rights to use the generic terms “parmesan”, “prosciutto”, “pecorino” and “mozzarella”. CCFN will continue working with the U.S. government to defend the rights of common name users in this large and growing market, as well as to engage directly as needed to defend common names in China.

## Major Cheese-Producing Nations Stand Firm Against EU’s Misappropriation of “Havarti”

Major dairy-producing organizations around the world challenged the European Union’s (EU) decision to disregard market realities and international trade standards by granting Denmark sole ownership of the generic name “havarti” cheese in Europe. With the EU’s publication of the decision in October, “havarti” was granted a geographical indication (GI), even though 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 the United States. The move blocks any producer outside of Denmark from selling cheese by that name within the EU. Other major producers of havarti include the United States and Canada, with additional production in Australia, New Zealand, and in other European nations such as Germany. (See [infographic](#) and the [CCFN press release](#).)



Leading dairy associations from Argentina, Australia, New Zealand, Uruguay and the United States together with CCFN sent a [letter](#) to EU Commissioner for Trade Cecilia Malmström and EU Commissioner for Agriculture Phil Hogan expressing outrage at the EU’s disregard of established international standards and protocols for fair trade.

News of the EU’s action on havarti drew extensive media coverage, including analysis in the [World Trademark Review](#), which observed that GIs are becoming “an even hotter political issue”, most recently increasing the rancor related to the EU-Australian trade deal. WTR concluded, “The Havarti backlash serves as a microcosm of the political debate over GIs. With Brexit negotiations ongoing (and rounds of trade negotiations to follow), Australia and the EU maneuvering around a \$100 billion free trade deal and a new USTR Special 301 report due early next year, expect to hear a lot more about GIs in the coming months.”

**Also...**

### **CCFN Opposes 12 Key Terms in Australia-EU FTA**

The EU and Australia recently [published](#) a list of geographical indications requested by the EU as part of the free trade agreement (FTA) in negotiations between the two nations. Last month CCFN filed oppositions to 12 key terms, and also sent a letter to negotiators affirming the importance of the assurance provided by Australia in its GI notice that specific common name portions of certain compound GIs will remain free to use. The terms CCFN objected to include: asiago, feta, gorgonzola, fontina, Grana Padano (“grana”), gruyere, munster, neufchatel, Schwarzwälder Schinken (“black forest” ham), Mortadella Bologna (“mortadella” and “bologna”), Pecorino Romano (“romano”) and Parmigiano Reggiano (“parmesan”).



### **Emmentaler and Gruyere GI Applications in Mercosur Face Opposition**

As part of negotiations between the European Free Trade Association (EFTA) and Mercosur nations, Switzerland provided a list of geographical indications for protection, including two common cheese terms, “emmentaler” and “gruyere”. CCFN recently filed oppositions to any restriction of these terms in order to safeguard their use in the future. CCFN wasn’t alone in crying foul on the effort to monopolize “emmentaler”; the European Association of Dairy Trade (Eucolait), which represents European dairy importers, exporters and wholesalers, also objected.

### **CCFN Gains WIPO Observer Status, Bolstering Efforts to Defend Consumer Interests**

The United Nations World Intellectual Property Organization (WIPO) has granted observer status to CCFN, an important step forward in CCFN’s ability to ensure balanced dialogue in the development of fair geographical indications (GI) policies that safeguard common names side-by-side with GI protections, to the benefit of consumers worldwide. The action took place in October at WIPO’s Fifty-Ninth Series of Meetings of the Assemblies.

“As the lead multilateral organization examining GI policies, WIPO plays a key role in fostering a broad dialogue on the ways GI guidelines must respect the inherent rights of food producers to use generic names,” said CCFN Executive Director Jaime Castaneda. “CCFN has already been active in WIPO for years; we look forward to continuing productive discussions that consider food and beverage producers and consumers in all areas of the globe.”



As a recent benefit of Observer Status, CCFN was invited to attend a meeting with WIPO Director General Francis Gurrey in Geneva in late November. A CCFN representative attended the meeting to stress the need for more balanced inclusion of the common names issue in WIPO’s GI programs and activities. CCFN also asked the Director General to consider, as WIPO administers the Madrid Agreement, that GI protections should not compromise the general principle in trademark protection that no party is allowed to register generic terms as trademarks—the anti-monopolization principle.

### **INTA Makes Positive Updates to GI Resolution**

The International Trademark Association (INTA) last month passed an updated resolution on geographical indications (GIs) that recognizes that terms “that are or have become generic terms in a jurisdiction should not be impaired by geographical indication protection in that jurisdiction.” There is also a provision regarding transparency and the opportunity to cancel and oppose GIs. As an INTA member, CCFN had worked actively on the process to update the resolution. The resolution was passed during INTA’s Leadership Meeting in Austin, Texas, attended by CCFN Executive Director Jaime Castaneda and CCFN legal consultant Frank Hellwig.

### **Before the Holiday Parties...**

CCFN will be spreading the word on common names this month at two important venues in the Washington, D.C., area. On December 12, CCFN will meet with **U.S. Patent and Trademark Office** (USPTO) attachés from around the world to brief them on issues related to geographical indications (GIs). And the **Italian Embassy** has invited CCFN to participate in a GI-focused event on December 16. We anticipate plenty of parmesan and prosecco to ring in the holidays!



### **And this...**

Two items on extreme GI fervor recently caught our eye...

**First**, an exasperated Indian journalist, Latha Jishnu, beseeches her fellow citizens to end their fixation on GIs in her blog, [“No end to these silly GIs”](#). Here is an excerpt:

“It is perpetual silly season at the Geographical Indications (GIs) registry ...India appears to believe in numbers and in domestic competition if at all it exists. It has more than 600 GI products in defiance of logic, rules and any economic rationale.



*Laddoos offered to Lord Ganesh*

“Take the case of the rosagulla, which is the most popular GI story. No one has asked why West Bengal has sought a GI for a sweetmeat that is available in every nook and cranny of the country. Or, why Odisha was handed a GI for the same item...

“State governments appear most infected by the GI... The famous Balaji temple in Tirupati got a GI some years ago for its laddoos in a controversial decision that set off reams of analysis and a counter-petition in the courts. But encouraged by Tirupati’s victory, a Murugan temple in Tamil Nadu has now secured a GI for its prasadam (an offering made to the deity and given to devotees), a mix of banana, jaggery and ghee. What a GI will do for this concoction disbursed in a religious setting boggles the mind.”

**Second**, a tasty tidbit from [the Guardian](#) entitled, “Stop, you can't pop: prosecco Pringles seized in Italy”:

“The Italian agriculture minister, Teresa Bellanova, has pledged to fight against ‘identity theft’ after 250 tubes of prosecco-flavored Pringles were seized from a supermarket chain in the Veneto region. The supermarket had purchased the crisps, officially labelled ‘prosecco and pink peppercorn flavour’, from a marketing affiliate of Pringles in the Netherlands.

“Luca Zaia, the Veneto president, shared a photograph of the offending can of Pringles on Facebook, superimposed with the message: ‘NO!’

“[But] Pringles said in a statement: ‘The prosecco and pink peppercorn variant was produced in 2018 as a limited edition for the Christmas holiday period. We used prosecco DOC (denomination of controlled origin) as an ingredient in the aroma and the use of the name of the product on the packaging was designed in line with DOC guidelines and European regulations. We have no plans to produce this variant in the future.’”



So, according to Pringles, they did respect the DOC. [Food & Wine](#) quipped, “If I was Italian, my bigger concern would be why the heck is someone trying to sell me nearly year-old Pringles?”

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