

CCFN ALERT – 4th Quarter 2018

(December 2018)

Notes to CCFN Members:

- Take part in a new task force CCFN is putting together to help provide the staff with member input on a number of policy initiatives. Look for details soon on a **February meeting!**
- Don't forget to check the Members-only page at www.CommonFoodNames.com to find many helpful resources, including a **Country-Term Report** that lists the terms that are restricted or partially restricted in key markets; and an **Activity Report** that summarizes 2018 CCFN activities to date.

Chairman's column

Demonstrating Alternative, Positive Approaches to GI Policy

As you'll read in this issue, we achieved tremendous progress for the common names issue in the new U.S.-Mexico-Canada Agreement (USMCA). The trade deal solidifies a dramatic change in the approach to GIs. For the first time, the United States has recognized and upheld the rights of common name users within a trade agreement. The deal establishes explicit considerations to safeguard generic terms, including: a list of commonly used cheese names that may not be restricted by Mexico moving forward, including "mozzarella", "cheddar", "provolone" and others; new parameters in Canada and Mexico that make it more difficult for nations to register new GIs that are common food names; and an opposition process that will allow common name users to object to GI applications that would monopolize use of generic terms.



These are safeguards that CCFN has been fighting for since our inception, and now – thanks to the efforts of CCFN, our members and supporters – they are solidified in one of the most important trade pacts in the world. Another forceful point in the deal is that generic terms already included in the international Codex Alimentarius standards should be respected. This is in direct opposition to the European Union's brazen efforts to confiscate terms like "havarti" and "danbo" that are already recognized as generic terms within Codex.

USMCA is not alone in clearly laying out some of these safeguards. Japan, Vietnam and other nations have articulated a “hands-off” approach to some generic terms, and have also established processes for companies and industries to oppose GIs that are generic terms. Both Japan and Vietnam, as well as others throughout the Pacific region, are also poised to soon implement the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes commitments on GIs and common names that CCFN worked extensively to secure during the TPP negotiations. Even though the United States is not a member of CPTPP, those rules will be binding on the how countries party to that agreement deal with GIs and common names.

These recent movements – the result of our diligence over several years – are progress toward marginalizing key pieces of the EU’s GI agenda. The EU’s approach is no longer regarded as the best or *only* approach. This, my friends, is how minds change, realities shift, and better, equitable policies are established.

Errico Auricchio
Chairman

USMCA Breaks New Ground with Better GI Policy

Companies in North America that produce foods that bear generic names praised the U.S. government last month for the seminal language included in the new U.S.-Mexico-Canada Agreement (USMCA) regarding geographical indications (GI) policy and the protection of common food names.



“USMCA marks a sea change in GI policy, recognizing the equal importance of the protection of distinctive products through GIs, and the defense of generic terms long used in the marketplace,” said CCFN Executive Director Jaime Castaneda. “The U.S. Administration demonstrated great leadership in pushing forward many key concepts for effective GI policy, which are of benefit to consumers and producers throughout North America, and which CCFN has long promoted and worked on with government leaders. Among other elements, these include commitments on transparency and the ability for stakeholders to object to pending GIs that may infringe on their rights to use generic terms.”

The USMCA marks the first time the United States has specifically included provisions that aim to directly preserve the rights of generic name users within a trade agreement – a goal CCFN has been working toward for many years. The deal establishes a non-exhaustive list of commonly used cheese names that may not be restricted by Mexico moving forward, including “mozzarella”, “cheddar”, “provolone” and others. In addition, Canada and Mexico will be adopting GI parameters that make it more difficult for any nation to register new GIs that are

common food names, and common name users will be able to oppose GI applications that would monopolize use of generic terms.

“These explicit considerations safeguarding generic terms are essential,” said CCFN Chairman Errico Auricchio, president of BelGioioso Cheese, “because the EU continues to move the lines on which names of cheeses, meats, wines and other products are fair game when it comes to abusing GI policies and monopolizing common names and terms.”

While praising U.S. government leadership in safeguarding generic terms, CCFN remains disappointed in the Mexican government for succumbing to pressures by the EU to give up a number of highly used common names within the Mexico-EU free trade agreement, demonstrating that CCFN’s work in the region is not yet done.

“The confiscation of these generic terms is disruptive to commerce and to pre-existing trade relationships, and in the end does not benefit Mexican retailers, producers or consumers,” Castaneda said. “We continue to work with the U.S. government and others to ensure that current trade to Mexico is minimally affected.”

U.S. and Philippines Affirm Positive, Mutual Approach to GIs

The United States and Philippines announced in October recent achievements resolving certain bilateral trade issues under their bilateral Trade and Investment Framework Agreement (TIFA). Among these was a common approach to handling GI applications in a fair, transparent manner that respects common name users.



U.S. Trade Representative (USTR) Robert E. Lighthizer said in the U.S. statement, “The United States notes that the Philippines is continuing to protect geographical indications (GIs) in a manner mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademark rights and not restricting the use of common names.”

He further noted that the United States “welcomes the commitment of the Philippines to further discuss ways to ensure that Philippine laws, regulations, and policies do not restrict or prohibit entry of U.S. products in the Philippine market. The Philippines confirms to the United States that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement.”

CCFN has been working for some time with Lighthizer’s team at the Office of the USTR and with officials and industry leaders in the Philippines, to continually articulate the need to consider

generic terms as an integral part in the GI applications process. This has included the submission of detailed CCFN comments on the Philippines' draft GI regulations, participation in a hearing on those proposed rules and a workshop focused on GI matters, as well as additional engagement over the past few years. The full U.S. statement can be read [here](#).

Around the World: Ensuring Generic Names Are on the Agenda in GI Discussions

As GI policy discussions take place around the world, CCFN continually works to make sure that the consideration of generic names is part of the agenda. In the past couple of months CCFN has participated in several important meetings connected with these influential organizations:

- **World Intellectual Property Organization (WIPO):** CCFN recently participated as guest speaker at a GI Workshop in Chile, which is well-timed with the discussion of GIs in the upcoming Chile-EU trade negotiations. CCFN engaged with WIPO earlier this year regarding 2018-19 programs to determine inclusion of common name speakers. In addition, CCFN met earlier this year with Chilean industry and government officials to discuss GIs and the Chile-EU FTA.
- **European Union Intellectual Property Office (EUIPO):** CCFN participated in a panel at the EU Intellectual Property Office's October conference in Spain, entitled "Trade Marks and Geographical Indications: Future Perspectives". Ambassador Al Johnson, who represented CCFN, said afterwards that several European participants expressed interest and even some support for the generic names position, which is not often heard in Europe.
- **Australian National University GI Workshop:** CCFN participated in a workshop in Berlin in September entitled, "Understanding Geographical Indications". Participants from all over the world and from different intellectual property areas were in attendance.
- **Indonesian Workshop on GIs and Common Names:** A CCFN representative spoke at a workshop organized by the U.S. Foreign Agricultural Service and U.S. Patent & Trademark Office in Indonesia, to educate Indonesian government officials on proper GI procedures and common name safeguards. Indonesia is currently negotiating a trade agreement with the EU and has yet to determine the details of how it will handle GIs in that agreement.



Also...

CCFN Uses Seat on INTA GI Committee to Defend Rights of Common Name Users

This year CCFN became a member of the GI Committee of the International Trademark Association (INTA), which gives common name users a voice in shaping the comments and policies of one of the world's leading



intellectual property organizations. INTA is currently rewriting its longstanding GI position; CCFN has been working to ensure these policies move in the right direction. This has included attending INTA's Fall Leadership Conference Meeting, where the elements of the new INTA GI policy were debated in detail. CCFN also secured a column slot to articulate the views of common name users in the INTA Register publication. Through INTA, CCFN this year has submitted comments on different GI issues and trademark laws for the African Regional and Intellectual Property Organization (ARIPO); Kenya's domestic regulations on GIs; South Korea's EU free trade agreement; and China-EU's "100 to 100" process.

World Trademark Review Publication Features Point-Counterpoint on GIs

CCFN and OriGIn faced off in a written debate in the World Trademark Review (WTR) in October. As described by WTR, "We bring together two organisations with different perspectives on GIs to discuss the best route forward for this unique form of protection." WTR describes the Organisation for an International Geographical Indications Network (oriGIn) as a group that "was established in 2003 and actively campaigns for the effective legal protection and enforcement of GIs at the international, national and regional level." The exchange illustrates the broad divide in the positions of the two groups. In its article, OriGIn raised issues of product quality and intellectual property law in defending the EU's current GI policies. "It cannot be said that GIs harm consumers or competition," OriGIn Managing Director Massimo Vittori wrote. "GIs offer consumers, who are increasingly demanding when it comes to authenticity, information to guide their choices as well as an alternative to commoditised food."



CCFN Senior Director Shawna Morris responded in part, "When these GI regimes force a generically labelled product off the market, producers who cannot afford to make the change will be forced from the market forever, resulting in fewer consumer choices and higher prices due to lack of competition. And forcing a change from one generic term to a set of splintered and completely unknown new terms will undoubtedly confuse consumers, making it difficult for them to find (and trust) the product they once purchased." Morris noted that the quality argument rings hollow, given the many awards won by non-European made cheeses that bear generic terms, including the top honors won by Sartori Foods in 2011 for its parmesan at the prestigious UK-based global cheese competition, "even defeating the parmesan from Parma, Italy." To read the full debate, go to the [WTR link](#) and register for free. In January WTR will allow CCFN to post the full debate to the CCFN website.

CCFN Wards Off Feta Threat in Canada

Earlier this year CCFN's weekly trademark watch discovered a local feta trademark application in the Canadian Intellectual Property Office database, for the name "Feta Culture". With the aid of local counsel, CCFN sent a letter to the applicant requesting that a disclaimer should be



included with the trademark to note that the name “feta” remains generic, as is common practice. The applicant agreed and the disclaimer was included as of October. This episode is just one recent example of how CCFN’s extensive monitoring process continues to serve in defense of common name users.

Brexit: UK Poised to Accept EU GI Approach

While the Brexit deal is still in flux, at this stage the United Kingdom (UK) has conceded to EU demands that all EU GIs registered in the EU before the end of the Brexit transition period (December 31, 2020, at the earliest) would be automatically protected in the UK post-Brexit. The European Commission and the UK government issued a [draft withdrawal agreement](#) in mid-November, establishing the terms of the UK’s divorce from the EU, as well as a political declaration on the future EU-UK relationship. The agreement has been approved by the EU Member States and is slated for a vote by the UK Parliament in December. The UK House of Commons – in a rare display of political agreement across the aisles – has expressed strong criticism, casting serious doubts on whether the agreement can be approved.



There has been extensive debate about whether the UK should hold fast to an EU approach to geographical indications. The UK government had initially indicated that EU GIs would not be automatically protected in the UK post-Brexit, but eventually had to accept EU demands in order to reach an agreement on the broader withdrawal agreement. In response to a call for public input on GI matters earlier this year, CCFN provided comments to the UK government outlining what a well-designed UK GI system could look like. CCFN has supported the concept of Britain establishing a GI approach that is right for them, and not beholden to the EU’s GI policies.

Visit the UnCommon Hero Gallery

In the past six years, CCFN has featured a broad range of food executives from around the world as “UnCommon Heroes” – leaders who protect and promote common food names. We invite you to visit the [UnCommon Hero gallery](#), where you can hear the international voices that support the rights of users of generic names. Our UnCommon Heroes are listed below. If you’d like to be featured in a profile, or know of a good candidate, let us know! Contact Morgan Beach at mbeach@commonfoodnames.com.



- Mauro Montalto, Director, Florida Cheese (Australia)
- Barry Carpenter, President and CEO, North American Meat Institute
- Hisao Fukuda, COO and Secretary General, The Japanese Foodservice Association



- Fermo Jaeckle, CEO Intercibus Inc. (USA)
- Ramiro Pérez Zarco, Executive Director, Asociación de Desarrollo Lácteo de Guatemala
- David Ahlem, CEO, Hilmar Cheese Co., Inc. (USA)
- Jaime Olvera Kipper, Owner, Kipper Cheese (Mexico)
- Neal Schuman, CEO, Schuman Cheese (USA)
- Emilio Karake, Operations Director, Italiana de Alimentos, S.A. (Guatemala)
- Mike McCloskey, CEO, Select Milk Producers, Inc. (USA)
- Interview with Roberto Brazzale, CEO of Gruppo Brazzale (Italy)
- Ed Townley, CEO of Agri-Mark (USA)
- Giorgio Linguanti, Proprietor and Cheesemaker, That's Amore Cheese (Australia)
- Norberto Purtschert, General Manager, Floralp SA (Ecuador)
- Pedro Garcia, Tregar – García Hnos. Agroindustrial S.R.L. (Argentina)
- Ron Buholzer, Klondike Cheese (USA)
- Jim Sartori, Sartori Co. (USA)
- Errico Auricchio, BelGioioso Cheese (USA)
- Jose L. Vargas Leiton, Corporación Monteverde CR, S.A. (Costa Rica)



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