



Consortium for
Common Food Names

An International Initiative To Preserve the Right To Use Generic Food Names

CCFN ALERT Newsletter – Q4 2021
OCTOBER 2021

Chairman's Column



Not 2020...But Still Many Challenges

The rights of common name users continue to be under assault around the world and CCFN has been up to the challenge. In the courts, at the negotiating table, and in country, regional and global forums, CCFN has been proactively representing its members' interests.

While this newsletter only covers a small part of what CCFN does day-to-day, a quick look through the headlines shows that we are not resting on past success. The EU continues to try to deny the rights of common name users and CCFN must remain active in protecting those rights.

With a new administration in Washington this year, CCFN has been continuously engaging at every level of the new Biden administration, and with Members of Congress, to inform and secure support for domestic and international trade and intellectual property policies that defend common names. CCFN's cooperative relationship with Congress and with U.S. government trade, agriculture and intellectual property officials has yielded some positive results.

For example, an attempt in 2020 from two European Consortium's to restrict the uses "gruyere" as a common name in the United States was initially stopped at the U.S. Patent and Trademark level, thanks in part to CCFN's input into the agency's processes to evaluate trademark applications. The European Consortiums have since appealed the ruling to a U.S. District Court where CCFN is working with industry partners to defend. As we see it, this legal battle is bigger than just a fight over one particular name. It will signify how the United States handles predatory attacks on generic terms and how U.S. policy makers might engage on this issue with their counterparts around the world. A CCFN victory over Europe in this case would help discourage further attacks on other generic names in the United States and set a positive example to hold up to other governments.

Internationally, CCFN has been active across many markets, as well as at the global level through with the World Intellectual Property Organization (WIPO) as that organization adjusted

to new leadership this year. Participation in international forums is essential to ensure that participants hear more than just the EU's line of argument on GIs. This year virtually every corner of the world has had the opportunity to hear CCFN explain the historical relevance, rights, and economic importance of common names to their own intellectual property systems, trade relationships, consumers, and users.

We never forget that without your support these and other CCFN activities would not be possible, so we thank you.

Errico Auricchio
CCFN Chairman
President and Founder, BelGioioso Cheese

Consortium for Common Food Names (CCFN) and Allies Robust Defense of U.S. "Gruyere" Use

Over the first two quarters of 2021, the Consortium for Common Food Names (CCFN) and a coalition of other U.S. dairy stakeholders aggressively defended the generic status of the term "gruyere" in the U.S. market against efforts by the Swiss and French gruyere Consortiums to monopolize use of the term.

Last year the U.S. Patent and Trademark Office's Trial and Appeal Board (USPTO) rejected a Swiss and French trademark application seeking sole use of the term "gruyere"; USPTO rightfully ruled that the term was generic. Late last year the foreign Consortiums appealed that ruling to the U.S. District Court for the Eastern District of Virginia and CCFN has been leading efforts to maintain the precedential USPTO determination ever since.

In spring of this year, CCFN's attorneys submitted briefs in the case and outlined during oral arguments a strong case for why summary judgement to uphold the earlier USPTO ruling was merited. At press time, a ruling in the case remained pending.

CCFN Executive Director Jaime Castaneda stated that "CCFN views this case as an important piece of our work to help companies retain their rights to use food and beverage terms long established in the marketplace despite predatory efforts by foreign interests to restrict those rights. USPTO carefully considered this issue last year and came to the only appropriate conclusion – that the wide-spread use of the term "gruyere" in the U.S. market clearly establishes it as a generic term and as such makes it wrong for any one interest group to monopolize usage of it."

USTR's Trade Report: GI Misuse a Priority Barrier to U.S. Food Exports

In a testament to years of CCFN advocacy efforts to elevate the issue of GI abuse to U.S. government officials, the Office of the U.S. Trade Representative highlighted the issue in its

annual National Trade Estimate (NTE) report on tariff and non-tariff barriers to U.S. exports. The issue of common names was included in USTR's [press statement](#) on the report, with the agency viewing the issue as a priority concern.

The comprehensive 570-page [NTE report](#), released in late March 2021, captures the broad range of tariff and non-tariff barriers to U.S. goods and services exports put in place by countries around the world. Restrictions on the use of common food names was cited as a priority trade impediment that American producers face when seeking to export their generically named foods and beverages.

The European Union (EU) has been, and continues to be, a particularly bad actor with regard to the misuse of GI protections. USTR noted that the "U.S. remains highly troubled by the EU's overbroad protection of GIs, which adversely impact both protections of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets."

"USTR's recognition of GI misuse as a means of confiscating market share is an important step toward addressing this problem," said Jaime Castaneda, CCFN Executive Director. "We are encouraged that CCFN members' persistent work alongside the U.S. government on this issue has elevated the concerns surrounding GI abuse from a relatively obscure issue just a decade ago to a priority for the agency."

"It is imperative that USTR and its interagency partners work to ensure common names are not further restricted by the EU's blatant attempts at monopolizing generic terms that consumers around the world have come to know and love," Castaneda said.

CCFN is continuing to work with USTR to build on the precedent set in the recent U.S.-Mexico-Canada Agreement (USMCA) of including in all U.S. trade deals a list of common food names (e.g., in the case of USMCA, cheese names) that will be protected in perpetuity from countries imposing GI restrictions on them.

CCFN and Supporters Press U.S. Trade Representative Tai on Tackling Trade-Limiting Restrictions on Common Food and Beverage Names

At U.S. Trade Representative Tai's Senate confirmation hearing in late February 2021, Tai told Senators on the Finance Committee that she would prioritize protecting the use of common food names in future trade negotiations. She noted that the United States secured historic protections for common food names in the U.S.-Mexico-Canada Agreement (USMCA) and that she would build on that success in future trade negotiations. This follows on the heels of CCFN's extensive work throughout last year to re-educate Congressional offices on the issue of common names and to press USTR to expand protections for those terms as it negotiates with trading partners.

In a March 2021 [letter](#) organized by CCFN, a broad cross-section of national food, agriculture, and beverage associations urged the new U.S. Trade Representative to preserve U.S. exporters' foreign market access by protecting their rights to use common food and beverage terms around the world and rejecting EU-led efforts to hamstring global competition through restricting the use of those terms. The groups called out the EU's continued use of trade agreements to impose barriers barring the United States and other nations from competing on a level playing field in the sale of various commonly named food and beverage products.

Tai, who was confirmed in mid-March, also has been receptive to on the need to address the growing challenges facing the use of commonly named products. As noted above, under her leadership, USTR recently issued two reports – the National Trade Estimate and the Special 301 (see above) – that included the U.S. government's commitment to contest the EU's continued misuse of GIs as a way of limiting exports to the EU and even to countries with which it has trade agreements.

Ambassador Tai also participated in the Hybrid Annual Meeting for the National Association of State Departments of Agriculture in September, and when pressed about the U.S. – Mexico – Canada Agreement and GIs, she offered her strong support for common names, saying that she “understands the concerns of dairy producers, and particularly cheese manufacturers who want to export cheeses using common names for types of cheeses that they've been producing for decades and in some cases over generations. I want everyone to know that at USTR we remain committed to enforcing all the provisions in this agreement and certainly [to] ensuring that Canada and Mexico live up to their promises for our American dairy farmers.”

USTR Special 301 Intellectual Property Report Features Section on Common Names

In May 2021, the Office of the U.S. Trade Representative (USTR) issued its [Special 301 report](#) on intellectual property protection, which included dealing with the misuse of GI protections as a trade priority. To help inform the report, in January, CCFN filed with USTR extensive [comments](#), outlining GI-related developments, the roles of foreign governments in driving those policies, and the impacts on U.S. farmers and food producers.

In the report, which annually details the global challenges related to intellectual property, USTR noted the EU's policy of blocking fair competition through the adoption of GIs that restrict the use of common food and beverage names.

In response to the EU's aggressive promotion of exclusionary GI policies, the report said, the United States will work to ensure that:

- GI protections do not violate prior rights, such as a U.S. company with a trademark that includes a place name, for example, and do not deprive interested parties the ability to use common names, such as “parmesan” or “feta.”
- Interested parties have notice of, and opportunity to oppose or seek cancellation of, any GI protection that is sought or granted.

- Notices issued when granting a GI consisting of multiple terms identify the common name components.

USTR also indicated it will oppose efforts to extend the protection given to GIs for wines and spirits to other products.

CCFN Input Shapes International Trademark Association Comments on the EU's Proposed System for Non-Agricultural Geographical Indications (GIs)

The International Trademark Association (INTA) utilized ample input from CCFN in its comments to the European Commission on their consideration of non-agricultural geographical indications (GIs). CCFN regularly seized GI-related opportunities for comment offered by the EU and other countries in order to consistently outline the core elements of well-designed GI systems.

CCFN submitted its input to INTA earlier this year as part of its active work on the INTA GI Committee. Among the points CCFN emphasized were three key elements:

1. GI protections must be coupled with a heightened level of clarity and transparency in relation to the process and scope of GI registration as well as procedural safeguards and a balancing of the public's interests.
2. There must be improved clarity and limits in relation to the objectives and scope of GI protection in the EU. This would include clear exclusions from the scope of protection for GIs to avoid restricting common terms.
3. There is a need for a straight-forward, transparent, and fair GI application and examination process, where the evidentiary and financial burdens are distributed fairly between interested parties.

In INTA's comments to the European Commission, it advocated for ensuring that the process for registering non-agricultural GIs is clear and constitutes effective governance. INTA's recommendations for any regulation of GIs include the importance of providing effective and transparent mechanisms for addressing:

1. Applications for GIs, applications for amendments, and applications for cancellation; and
2. Opposition, cancellation, and notification procedures that recognize pre-existing trademark rights with which GIs might conflict or cause confusion.

INTA's exhortation to the EU echoed CCFN's key themes of the risk that excessive protection poses to generic users: "INTA notes that an additional EU protection regime for non-agricultural GIs has the potential to create many conflicts between newly created non-agricultural GIs and the numerous pre-existing trademark rights protected in the Single Market and pre-existing generic terms unless careful safeguards are introduced. Such safeguards should aim to ensure a fair and transparent system, with maximum legal certainty on the scope of protection of the newly created GIs for a minimum disruption of pre-existing rights. An excessive scope of protection could unduly prejudice the existing rights of trademark holders and limit the

freedom to use generic terms. The GI protection regime in the European Union needs to be fair and effective.”

CCFN Engages with Africa in GI Workshop

In June 2021, CCFN presented in a webinar sponsored by USPTO and the African Regional Intellectual Property Organization (ARIPO) focused on the use of common names and GIs in Africa. Approximately 60 participants across the ARIPO 19-country region participated in the event.

Former U.S. Chief Agricultural Negotiator, Ambassador Al Johnson, provided a presentation on behalf of CCFN. The presentation covered the history of common names in intellectual property (IP) and the marketplace, and the importance of protecting the rights of common name users, including producers and consumers in Africa. In addition, it outlined proposals as to how these African countries can manage their IP processes to ensure transparency and due process that results in fair and objective decisions that avoid the granting of unjustified GI name monopolies.

This event is part of a series of educational efforts by USPTO in cooperation with CCFN to educate intellectual property officials in Africa and other regions about GI issues and the importance of ensuring producers and consumers who rely on generic terms retain the right to use them.

CCFN Submits Comments on EU GI and IPO System Changes

CCFN submitted two sets of public comments to the EU in response to a proposed revision of its geographical indications (GIs) system and its 2022 EU Intellectual Property Office’s (EUIPO) Guidelines on trademark practice.

In the first set of comments, CCFN emphasized that the scope of protection for EU GIs “creates legal uncertainty” regarding the type of products or business activities that could be a breach of a GI holders’ rights. Additionally, CCFN addressed EU efforts to tie GIs to advancements in sustainability and animal welfare. CCFN argued that a GI regime is not the appropriate venue to address these issues and risks leading to additional direct or indirect restrictions on the use of a new range of terms that could be placed on producers outside the EU. CCFN also went on to point out that the European Commission’s priority should be to eliminate the arbitrary nature of EU GI decisions. The solution that CCFN recommended to solve this issue was to establish a single, independent IP Agency that would manage GI registrations and objectively decide on the oppositions and cancellations filed. With a transparent, truly independent body, the EU could avoid the concession of abusive or unlawful GI-related rights.

In separate detailed comments on the EU trademark guidelines proposal, CCFN emphasized that in the EU's consideration of any trademark application it must ensure that the name is not "descriptive, generic, or of common use term." CCFN comments on the proposal's specific provisions focused on the need for the EU to use a consistent, transparent, and fair process that allows for third party input and the consideration of objective references (e.g., Codex Alimentarius, newspapers, trade, etc.). In addition, CCFN raised concerns about the lack of clarity and broadness of some of the guidelines while others were overly restrictive, all of which could be abused to deny or limit the rights of common name users. Concerns were also raised about how translations of GI names would be treated with CCFN stating that translations should be considered separately as to consumer's perception of their genericness. Comments also pointed out that trademarks and GIs with generic parts should be allowed to coexist. Finally, CCFN identified that there is an essential need for consistency in how GIs are created, including that all proposed GIs should go through EU's due process and not be established outside of this process through trade agreements or treaties.

CCFN Discusses Collaboration with WIPO on Common Names



CCFN met virtually with U.N. World Intellectual Property Organization (WIPO) Director-General Daren Tang in January to welcome him in his new role and to discuss potential areas of collaboration, particularly on issues related to the use of commonly named products.

In a February follow-up [letter](#) to Director-General Tang, CCFN reiterated its offer to work with the WIPO to ensure that interested parties are provided balanced

information on issues related to common names so they can make informed decisions in the best interests of their producers, consumers, trading partners, and other stakeholders.

CCFN also recommended that WIPO employ institutional and programmatic solutions to ensure that guidance on GIs and other intellectual property issues incorporate matters related to common names and the importance of a balanced and fair approach. That input yielded a step in the right direction with more balanced representation for common name users during WIPO's flagship GI Symposium, held virtually this year.

Since 2019, CCFN has been recognized as an official WIPO Observer and has participated in relevant committee, general assembly, and other meetings representing the interests of common name users. Earlier this year CCFN participated in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and the October WIPO General Assembly meetings. Participation in these meetings not only allows CCFN to be aware

of international developments in the GI and common name space but also provides an opportunity to remind various parties around the world of the intellectual property rights of common name users.

Common Names Get Airtime in WIPO's Global GI Symposium

In September, CCFN's Senior Director, Shawna Morris, spoke to over 300 participants of the WIPO's bi-annual symposium on GIs about how GIs are impacting trade around the world. Her remarks called for respecting the rights of producers and consumers to use common food names, and specifically targeted actions by the EU, which restrict those rights. Highlighting that the misuse of GIs stamps out competition to the detriment of local industries, trading partners, and consumers, Morris called for stronger protections to address negative impacts.

She also highlighted avenues for common ground to register legitimate GIs and protect the rights of common name users. These include:

1. Requiring all GIs to submit to a thorough, local application process in each country;
2. Refusing to register GIs that are part of the public domain;
3. Having a local application process in each country that is consistent, methodical, transparent, and free from political and economic influence.

Two other speakers of note also participated in the symposium:

Hazel V J Moir, from the Australian National Universities' Centre for European Studies, spoke on a panel regarding the Socio-Economic Implications of GIs. Dr. Moir work includes providing an independent analysis of the empirical evidence on the impact of GIs and policies related to trade treaties and GIs. During her presentation, Dr. Moir made the observation that, for the most part, there is not conclusive evidence that GIs are having a significant impact on socio-economic conditions (e.g., market size, net producer prosperity, regional prosperity). The primary reason for this is simply that the data is not being collected by the EU or others to allow for a rigorous and robust analysis of this issue.

In addition, Mr. John D. Rodriguez, from the USPTO's Office of Policy and International Affairs (OPIA) also addressed the Symposium, touching on the challenges with respect to Geographical Indications and the Internet Domain Name System. Of particular concern to GI advocates is that the Uniform Dispute Resolution Policy (UDRP) of the Internet Cooperation for Assigned Names and Numbers (ICANN) offers a protection mechanism against "bad faith" registrations of trademarks as domain names, but the UDRP is not applicable to sui generis geographical indications. Mr. Rodriguez focused on the various tools currently available to address disputes in domain names and why further expansion is not warranted. He pointed out that it is premature to address the issues related to GI names as, unlike trademarks, there is not "across the board" agreement on what should be a GI, what rights GIs have, how they should be protected in their various forms and territories, and what would be considered "bad faith" (e.g., common name use).

CCFN Provides Guidance on GI Recognition at IP Forum

At the 2021 World Intellectual Property Forum, CCFN consultant Juan Antonio Dorantes Sanchez discussed the issue of common name confiscating through the misuse of GIs with more than 1,500 attendees from 30 countries. The event provided CCFN with an opportunity to continue to communicate to global audiences the importance of sound GI policies that respect the rights of generic users.

After laying out the definition and uses of GIs, and noting they “have a territorial validity, in principle,” Dorantes Sanchez detailed the misuses of GIs and how countries can achieve a balance between protections for product names and allowing the use of commonly named products.

Among other suggestions, he said countries should ensure that:

- Procedures and decisions on protecting or recognizing GIs be exclusively handled by intellectual property (IP) authorities.
- Domestic procedures, not free trade agreements (FTAs) with automatic recognition of GIs be used to set protections. If GI protections are included in an FTA, countries should ensure that procedures for their recognition respect due process and transparency principles of IP laws or that decisions be based in IP reasoning and pre-examination by domestic authorities.
- Governments publish applications for GI recognitions before they are granted, allow a reasonable period for opposition, and provide final decisions in writing.
- Every term subject to recognition is assessed on its merits to receive protection as a GI in the territory where recognition is sought.
- Prior rights of users of common terms are enforced and respected by clearly defining grounds for opposition and the existence of common use or descriptive terms and following objective guidelines for determining that a term is generic.

Other EU FTA’s and Other CCFN Activities

Australia – EU Free Trade Agreement (FTA): Since the beginning of negotiations between the EU and Australia, CCFN has been engaging with the Australian government and private sector to promote the interests of common name users. For example, in March CCFN participated in a virtual stakeholder briefing event for the FTA and also submitted questions on GIs and common names usage to Australia’s Trade Department.

Chile – EU FTA: As with other EU FTA negotiations, CCFN continues to work with allies in Chile to promote policies that respect the rights of common name users. In May CCFN participated in the stakeholder meeting (*Cuarto Adjunto*) organized by the Chilean government regarding GIs in this FTA. CCFN followed this meeting additional discussions with Chile’s Intellectual Property lead in order to provide specific common name concerns related to these negotiations.

Vietnam – EU FTA: CCFN continues to monitor the implementation of this FTA. In a letter to Vietnam’s National Office of Intellectual Property in June, CCFN requested an update on the status of changes to their IP Law that will incorporate Vietnam’s obligations under the FTA. Of particular concern are the rights of prior users of terms that are to be protected as GIs and the



opposition process for common users to avoid the government’s acceptance of illegitimate GI applications.

United Kingdom – Brexit: With a potential U.S.-UK FTA, CCFN closely monitors UK policies impacting GIs and common names in order to avoid future barriers to trade. As a result of Brexit negotiations, CCFN submitted a letter in July to the Department for Environment, Food and Rural Affairs (DEFRA) with concerns about the UK’s adoption of the EU’s GI framework.

International Trademark Association (INTA) Videoconference on Mexico: CCFN continues to be involved on multiple fronts with INTA. In addition to the EU comments covered earlier, CCFN participated in a videoconference with INTA’s President to address IP issues in Mexico, including GIs. CCFN encouraged the creation of a balanced system for the protection of GIs that respects the rights of common name users.

Oppositions: CCFN continues to be proactive in opposing GI and trademark applications that threaten the use of common names. Some recent results:

- **Australia:** As a result of CCFN’s successful opposition on a Gorgonzola trademark application, the applicant, Consorzio Per La Tutela Del Formaggio Gorgonzola, was ordered to pay a portion of CCFN’s costs related to this case.
- **Turkey:** In June, Turkey partially accepted CCFN’s opposition to a "Mozzarella" trademark and remove the dairy references from the application in order to ensure it would not impact use of the term “mozzarella”.
- **UAE:** In June, the United Arab Emirates’ (UAE) Patent Office denied the registration of the term “Gorgonzola.” This action was the result of CCFN filing an opposition against a trademark application by the Consorzio per La Tutela del Formaggio Gorgonzola.

Other News from Around the World ...

USPTO Gruyere Decision a Top 10 Trademark Ruling in 2020

The CCFN Gruyere issue received some recognition beyond the GI/common name community. Law360, a legal news service, [cited](#) the victory by U.S. dairy concerns over Swiss and French gruyere associations as one of the top 10 trademark rulings of 2020. As mentioned above, in August of last year, the U.S. Patent and Trademark Office’s (USPTO) Trademark Trial and Appeal Board rejected efforts by the associations to trademark the term “gruyere” in the U.S., finding that it is a generic style of cheese. Law360’s recognition of the significance of the decision reinforces its wider importance to CCFN’s members and the general public.

EU-China Agreement on GIs Takes Effect

An agreement on GIs between China and the EU took effect March 1, 2021 after eight years of negotiation, according to a report in [China Daily](#), which said the country's first comprehensive, high-level bilateral accord on GIs will facilitate exports and imports of products. CCFN worked extensively throughout the EU-China GI negotiations to secure specific affirmations that the GIs would not restrict use of key terms such as parmesan, mozzarella, and others.

India, EU to Work on GI Agreement

The EU and India in early May [agreed](#) to resume negotiations on a free trade agreement, including on a section related to GIs. The decision to restart trade talks eight years after they were suspended came during a May 8 virtual summit between Indian Prime Minister Narendra Modi and leaders of the 27-member EU. In a joint statement, the sides said they would begin negotiations on a separate agreement on GIs that could be concluded separately or integrated into a final trade agreement.