



GIs and Common Names

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Consortium for Common Food Names

CCFN: Who We Are



PURPOSE AND STRUCTURE:

- CCFN works to protect the rights of producers and consumers to use common food names. We support protections for legitimate GIs while opposing the misuse of GIs to restrict common names.
- Office is based outside of Washington, DC with members and supporters from developing and developed countries in the Americas and Oceania, including many small manufacturers and farmer-owned cooperatives.

WE BELIEVE:

- GIs can be a legitimate form of intellectual property.
- Registration systems that guard against consumer confusion and the use of misleading information are appropriate.
- We are not seeking the right to use specific names such as “Parmigiano Reggiano” but do work to protect common names like “parmesan”.

Basis for Respecting Rights of Common Name Users

RIGHTS AND REASON:

- **Inherited tradition:** The producers of these products have existed for generations throughout the world with their products being used domestically and in trade virtually continuously.
- **Quality products:** The quality of these products have not just been validated by consumer behavior but also by respected experts:
 - For example, in 2018 U.S. cheesemakers won 89 medals at the World Cheese Awards eight super gold, 25 gold, 24 silver and 32 bronze.
 - Other non-EU cheesemakers have also won many awards in this and other competitions.
- **Consumer preference:** Consumer is “king” and consumers have confirmed that they value these products through their purchases.



Basis for Respecting Rights of Common Name Users

RIGHTS AND REASON:

- **Part of public domain:** These generic product names, describing a type of product not a geographic location, have been used far and wide for many years by many people in many markets.
- **Many of these products globally recognized objective measures:** global standards (e.g., CODEX), market and trade stats, trademarks, prior users, tariff lines, even been historically recognized in Europe itself as generic.
- **WIPO calls for protection of generic names, as part of public domain**
- **Protected by multilateral (e.g., WTO) and bilateral trade agreements**
- **Economic importance:** These businesses have been producing products, jobs and economic activity in non-European developing and developed countries for years and should have a right to continue.

What Common Name Users Want



All CCFN members want is to continue to offer their quality competitively priced products to customers as they and their predecessors have been doing for decades.

Confiscating Common Names is Not About...

- History or market presence
- Consumer desires
- Competitiveness
- Small producers
- Development

- Free and fair trade
- Intellectual property
- Quality
- Innovation
- Rights



What is the Issue Then?

It is about Power, Politics and Euros



Developed, Rich and Powerful Countries

- **Have domestic political problems because some powerful domestic producers can not compete on level playing field in their home markets and globally.**
- **So policy tools are used to solve this domestic political problem by using economic leverage to strong-arm developing countries' governments to:**
 - Grant monopoly control over generic names that are in the public domain in violation of global trade and IP rules.
 - Ban third party competitors that are not even at the negotiating table through these government-granted monopolies.
 - Forfeit rights to their domestic markets, markets that the GI demandeurs did not create, educate, build or serve.
 - Force increased prices on users and consumers so the chosen suppliers can make larger profits through these government mandated “name monopolies”.

How Is This Justified?



It's Disingenuous To:

- **Describe Comparable & Good-Faith Products as Knock-off's:**
 - By suggesting that developing countries' and others' producers are incapable of producing quality products using common food names and therefore label their competitors' products as "illegitimate", "poor quality", and "fake".
- **Decide Consumers Need to be Protected From Free Choice:**
 - By asserting that consumers aren't smart enough or should be denied the right to independently decide to buy a product from a high-priced European supplier versus another supplier that meets their needs and wants.
- **Claim a New Monopoly Status After Decades of Wide-Spread Usage:**
 - By saying that only European suppliers can provide these generic products, after years of other products in these markets, while claiming they really care about developing countries, trade rules and the intellectual property system.
- **Reclaim Colonial "Rights" Over Producers Around the World:**
 - By reclaiming these colonies' markets after hundreds of years and knowing the history and their role in those markets. Why are these products in these markets if not for European conquests, settlements, immigration and cultural influences that were promoted across the world?

Stamping Out Competition Has Real Consequences



Examples of Actors & Commitments Harmed

- **Consumers** – Fewer choices, higher prices and lower quality.
- **Private markets** – Up for bid by government-to-government negotiations, without compensation...principles of private IP ownership and public domain ignored.
- **IP system** – Damaged as names long in the public domain are lost, fundamentally undermining sacred IP principles in developing countries and globally.
- **Public confidence** –Lost as local investors and producers face uncertainty in the public domain because any foreign power may decide to force the local government to effectively nationalize a product for the benefit of foreign interests.
- **Trading system** – Undermined as WTO obligations and other trade commitments to third parties are ignored, without the other parties even being compensated.
- **Free Trade Agreements principles** – Reversed as the purpose of FTAs is to open markets but restrictions on common names eliminate competition.
- **International product standards** – Ignored, even standards GI-demandeur countries participated in creating.

How to Get From Bad to Better

Objectives: Register legitimate GIs, Protect rights of common name users

Require ALL GIs to submit to thorough local application process in each country, free from political and economic influence

- Applicant seeks a monopoly, so should have burden to prove name is not generic
- Transparency requires all compound term/translation restrictions be identified

Refuse to register GIs names that have become part of the public domain

- Encourage compound term GIs as default with protection only for use in full
- Avoid registering common names as single term GIs
- Require disclaimers for generic portion(s) in all GI compound name applications
- Any of the following are indicators that a GI should not be accepted:
 - Non applicant users, production, IP owners (current and/or historical)
 - Public info (e.g., websites, recipes, dictionaries, menus, publications, POS/retail info)
 - Other relevant information (e.g., countries' tariff lines, prior communications/policies, product standards including international ones set by Codex, etc.)

Examples

Independent GI Evaluations via IP Systems

EU-Central America FTA example



- Allowed for publication & opposition process by countries post-FTA conclusion which aimed to separate results from political pressure of FTA.

Avoiding politicization still a challenge: FTA implementation with Costa Rica was put on hold when local producers opposed a GI



EU-Singapore FTA example

- GIs subject to Singapore IP system; no approved list as part of FTA.

Examples

Europe - Internal



Emmental:

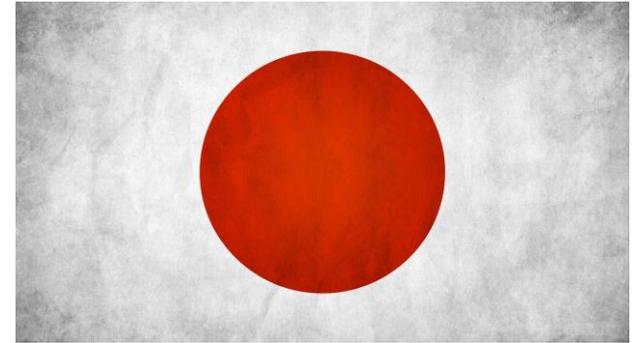
- Swiss region. However, significant production in France and Germany
- EU determined it would be unfair and unnecessarily commercially disruptive to deprive non-Swiss producers access to this name, so declared “emmental” generic
- EU registered three GIs that incorporate term “emmental” as compound Swiss GI

Gouda/Edam:

- Dutch government submitted applications for registration of Gouda Holland and Edam Holland
- Producers outside of Netherlands feared loss of right to use common names
- Dutch government met with interested parties, including CCFN members
- Agreed to include in registration language explicitly disclaiming exclusive right to terms “Gouda” and “Edam”

Examples

Japan GI System



Generally follows a compound GI model with a regional name plus the product.

- To date has worked well to safeguard unique Japanese specialties and not impact common names
- For example, GI for “Japanese sake”, not widely-made “sake”.

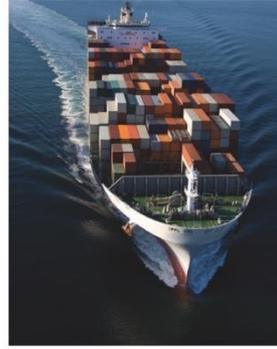
Transparent & deliberate process followed in development of GI system

- Was generally able to come to reasonable conclusions in granting GIs. However, some issues are still to be clarified.

Opportunity



- Preserving right to use common names does not need to prevent registration and protection of GIs
 - Possible to grant GI applicants protections they deserve without unduly affecting economic interests of producers in other countries.
- We can find common ground and work together to build world markets rather than erecting barriers to trade.



Thank you!