



PennState Law

Center for Agricultural
and Shale Law





PennState Law

Center for Agricultural
and Shale Law

The Legal Treatment in International Trade of Geographical Indications in the United States and European Union

2022 Pennsylvania Farm Show | Agricultural Law Symposium

Presented by Chloe Marie, Research Specialist

January 11, 2022, at 2:15pm (EST)





What is a geographical indication?

- An **indicator** – usually a name or a sign – found on a product packaging
- Used to identify a a product **originating from a specific geographical territory and whose unique features or reputation originate from said geographical territory**
 - There must be a **link** between the name of the product and its geographical origin
- Used to identify both **agricultural and non-agricultural products**
- Used to **protect** against usurpation or misuse of a product
- Must be **registered** with the competent national authority



Russia forces French to call champagne 'sparkling wine', reserves 'shampanskoye' for local bubbly

Posted Tue 6 Jul 2021 at 12:44am



 CNBC

Russia upsets France with new Champagne law: Here's what you need to know

Russian authorities are challenging that with a new law put forward earlier this week that requires French Champagne producers to add the words...

9 juil. 2021



 Reuters


France and Russia plan talks to take fizz out of champagne

...

PARIS, Sept 18 (Reuters) - France and Russia have agreed to talks to resolve a dispute over a new Russian law that forces French champagne...

18 sept. 2021



 The Moscow Times

Russia to Delay Champagne Label Law by 2 Months – France

Russia has agreed to delay implementing a contested law barring French champagne producers from labeling their bubbly "champagne" on bottles...

31 oct. 2021





GI Multilateral Protection – TRIPS Agreement

Article 22

- Provides basic principles for the protection of GIs.
- Defines GIs as indicators *“which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”*
- Requires each member of the Agreement to provide legal protection to GIs against usurpation.

Article 23

- Provides additional protection for wines and spirits

Article 24

- Provides exceptions to the protection of GIs, including:
- Members of the Agreement do not have to protect GIs if the names they do protect are generic terms in their countries.
- Protection of GIs cannot conflict with trademark rights that have been previously acquired in good faith.



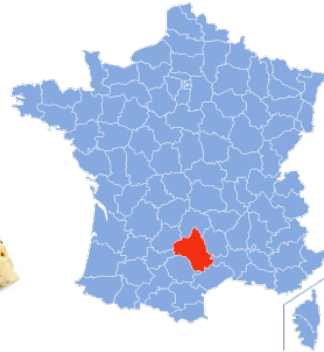
GI Protection in the United States

- In the U.S., GIs are protected as trademarks
 - Section 4 of the Lanham Trademark Act of 1946
 - The U.S. Patent and Trademark Office (PTO) allows the registration of GIs as a certification or collective marks
- A **certification mark** is a type of trademark. It shows to consumers that a product 1) comes from a specific geographical area and 2) meets specified standards with respect to quality, material, mode of manufacture, etc.
- A company generally owns a certification mark. It is the only one who has legitimate control over the use of the mark and the ability to determine the specified standards. Only authorized users may use the mark.



Examples of Foreign GIs Protected as Certification Marks

ROQUEFORT



French cheese

The certification is used upon the goods to indicate that the same has been manufactured from sheep's milk only and has been cured in the natural caves of the community of Roquefort, Department of Aveyron, France.

Mosel

German wine

The mark certifies origin in a geographical region in Germany, and characteristics of quality as most recently defined by the German wine law.



PARMA-REGGIANO



Italian cheese

The certification mark, as used by persons authorized by Certifier, certifies that the goods originate in the Parma-Reggio region of Italy, specifically the zone comprising the territory of the provinces of Parma, Reggio Emilia, Modena and Mantua on the right bank of the river Po and Bologna on the left bank of the river Reno.





GI Protection in the United States

- A **collective mark** is another type of trademark. It indicates membership in a collective entity (e.g., union, association or other organization) and distinguishes the geographical origin, quality mode of manufacture, etc. of a product.
- A collective mark implies that the members of the collective entity conform to the specified standards set by the parent organization.
- Unlike a certification mark, a collective mark is owned by a collective entity.
- The collective entity can advertise the mark as well as the products that are sold by its members under the mark.



Example of a Foreign GI Protected as a Collective Mark

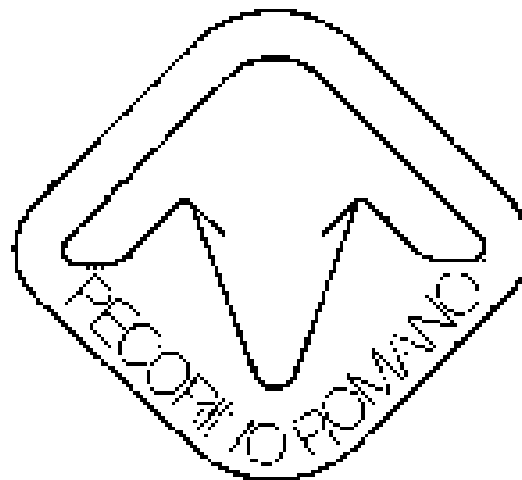
Pecorino Romano

Italian cheese made from sheep's milk

1341101

Current trademark owner: Consorzio per la Tu
Formaggio Percorino Romano Unincorporated
Association Italy

The mark consists of the Italian words "Pecorino
Romano" which means "Roman cheese made from
sheep milk" and the stylized representation of a sheep's
head within an inclined square





GI Protection in the European Union

- The European GI system is more protective than the U.S. trademark system
 - The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (as amended in September 1979)
 - The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (as adopted in May 2015)
- The existing EU GI system distinguishes GIs into two categories:
 - **Protected Designation of Origin (PDO)**
 - **Protected Geographical Indication (PGI)**





GI Protection in the European Union

- **Protected Designation of Origin (PDO)**
 - Applies to agricultural products and foodstuff
 - Identifies a product originating from a specific geographical area whose quality or characteristic is essentially or exclusively due to a particular geographic environment and its natural and human factors
 - **Every step of the production, processing, and preparation process must take place in the same geographical area.**
- **Protected Geographical Indication (PGI)**
 - Applies to agricultural products and foodstuff
 - Identifies a product originating from a specific geographical area whose quality, reputation or other characteristic is essentially attributable to the geographical origin of the product.
 - **At least one of the steps of production, processing, or preparation must take place in the place of origin.**



Differences between EU GIs and U.S. Trademarks

- A good originating from a specific place vs. originating from a particular company
- A private right vs. a collective right
- A trademark belongs to the company that created the trademark and can be licensed to anyone. A GI belongs to any producer located in the region identified by the GI



Economical Value of EU GIs

“Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the agricultural production in the Union. This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin” – Reg. EU No. 1151/2012 on quality schemes for agricultural products and foodstuffs

EU GIs benefit:

- **Producers**, because GIs allow for higher prices on the market – on average x2 the price of a conventional product – and a better division of the added value along the food chain
- **Consumers**, because GIs provide a guarantee on the origin, quality and authenticity of the product. GIs are signs of commercial trust
- **Society**, because GIs protection help secure jobs and maintain economic activities in rural – sometimes remote – areas; encourage the preservation of biodiversity and sustainable agriculture, local and traditional knowledge; and promote tourism.



Economical Value of EU GIs

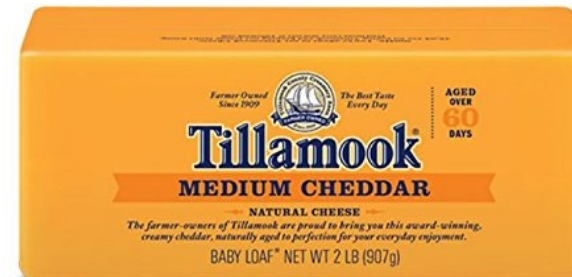
- “The **total sales value of GIs** was estimated at approximately **EUR 75 billion in 2017**. More than half (51.1%) of this value was accounted for wines; **35.4% was covered by agricultural product and foodstuffs**; spirit drinks represented 13.4%; and aromatized wine products made up 0.1%.”
 - The **global increase of the value** is estimated at **37%**, which represented an amount of **EUR 20.2 billion**
- **Exports** of GI products to **non-EU countries** accounted for **EUR 16.95 billion**
 - Came mainly from France (Champagne, Cognac), Italy (Grana Padano, Parmigiano-Reggiano, Prosecco) and the United Kingdom (Scotch Whisky)

Source: [Study on economic value of EU quality schemes, geographical indications \(GIs\) and traditional specialties guaranteed \(TSGs\) Final Report, European Commission \(February 2021\)](#)



Impacts of EU GIs on U.S. Agricultural Trade

- The real issue has to do with the scope of protection granted to GIs and Europe's agenda to register names that have already entered the public domain and are considered to be generic terms according to the U.S.
 - A generic term is a common name referring to the nature or class of a product and must be understood as such by the public. Anyone can use a generic term.
 - Ex: Parmesan, brie or mozzarella are generic cheese names in the U.S.
- Some common names have been used for generations in the U.S. and become part of brand names.
 - If a common name becomes a protected GI, it would be economically harmful to U.S. producers.





Gruyere Cheese: Generic or Not?

September 17, 2015 – Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère filed an application under 15 U.S.C. § 1054 to register the term “gruyère” as a certification mark for cheese. [Serial No. 86759759](#).

August 5, 2020 – The U.S. PTO Trademark Trial and Appeal Board concluded that “purchasers and consumers of cheese understand the term ‘gruyere’ as a designation that primarily refers to a category within the genus of cheese that can come from anywhere.” [Proceeding No. 91232427](#).

October 6, 2020 - Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère appealed the USPTO decision before the U.S. District Court for the Eastern District of Virginia. *Interprofession du gruyère, et al. v. International Dairy Foods Opposition, et al.*, No. 1:20-cv-1174.

December 15, 2021 – The U.S. District Court dismissed Plaintiffs’ claims.



PennState Law

Center for Agricultural
and Shale Law

Thank you!

Chloe J. Marie

Research Specialist

Center for Agricultural and Shale Law

Penn State Law

329 Innovation Boulevard, Suite 118

University Park, PA 16802

(814) 863-3396

cjm445@psu.edu





PennState Law

Penn State Center for Agricultural and Shale Law

Phone: (814) 865-4290

Website: www.PennStateLaw.psu.edu/casl

www.PennStateAgLaw.com

Twitter: [@AgShaleLaw](https://twitter.com/AgShaleLaw)

Facebook: www.facebook.com/AgShaleLaw/

Thanks to Our Partners!

- Programs of the Center for Agricultural and Shale Law are supported by:
 - The National Agricultural Law Center
 - National Agricultural Library
 - Pennsylvania Department of Agriculture



United States Department of Agriculture
National Agricultural Library



PDA