



April 2024

Generic or not: A dispute over the term "gruyere" comes to an end

The model for protection of geographical indications (GIs) in the United States continues to emphasize the importance of preserving generic terms for the benefit of consumers and producers. As shown in a recently decided case concerning gruyere cheese, the U.S. model relies on due process and transparency to ensure that all interested parties have a platform to provide evidence to support their claims.

In a victory for United States cheese producers and dairy groups, in March 2023 the Fourth Circuit Court of Appeals found that "gruyere" can be used to label cheese from outside the Gruyère region of Switzerland and France. *Interprofession du Gruyère v U.S. Dairy Export Council*, 61 F.4th 407 (4th Cir. 2023). The Trademark Trial and Appeal Board (TTAB), the District Court of the Eastern District of Virginia, and the Fourth Circuit Court of Appeals each held that "gruyere" is a generic term in the United States for a type of cheese.

Long-running dispute

The cheese, known for its rich, creamy and nutty flavor, originated in the Gruyère region of Switzerland and France. The dispute over use of "gruyere" as the name of a type of cheese has been ongoing for years. In 2001, Switzerland recognized "Gruyère" as a Protected Designation of Origin (PDO). The European Union (EU) recognized the PDO in 2011, and in 2012 France protected "Gruyère" as a Protected Geographical Indication (PGI). Such recognitions are intended to not only highlight a geographic region but also the qualities and traditions associated with the products and to assure consumers that they are purchasing genuine products. However, the EU PDO/PGI system that prevents use of protected terms by unauthorized entities within the EU and certain other jurisdictions is not transferrable to the United States.

In 2015, two European consortiums, the Interprofession du Gruyère in Switzerland and the Syndicat Interprofessionnel du Gruyère in France, filed an application with the United States Patent and Trademark Office (USPTO) seeking registration of GRUYERE as a certification mark to certify cheese originating from the Gruyère region of Switzerland and France. The specific geographic regions within Switzerland and France were defined, and each joint applicant provided the standards associated with the manufacture of the cheese.

U.S. practice

In the United States, the name of a place from which goods or services originate may function as a certification mark under certain circumstances (see the [Trademark Manual of Examining Procedures](#), §1210.09 “Geographic Certification Marks”). For example, in 1953 the USPTO registered ROQUEFORT as a geographic certification mark that certifies that the cheese to which the certification mark is applied “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.” (U.S. Reg. No. 0571798).

Application opposed

In the case of GRUYERE, the USPTO approved and published the certification mark application filed by the European consortiums. The application was subsequently opposed at the Trademark Trial and Appeal Board (TTAB) by numerous U.S. dairy groups on the grounds that (a) “gruyere” is a generic term for a type of cheese, and (b) the applicants lacked legitimate control over use of the applied-for certification mark.

The TTAB consolidated the numerous opposition proceedings and analyzed the genericness claim under a two-part test that considers (1) the “genus” of goods identified in an application and (2) whether the relevant public understands the designation to refer to the genus of goods.

In the United States, the name of a place from which goods or services originate may function as a certification mark under certain circumstances.

The evidence considered by the TTAB included: dictionary definitions of the term “gruyere” submitted by both sides; examples of use of “gruyere” in the press; internet reference materials, and trade and merchant publications; data showing the source of cheese labeled as “gruyere” imported into the United States from sources outside Switzerland and France; production and sales data involving cheese labeled as “gruyere” produced in the United States; and a standard of identity regulation for “gruyere” issued by the U.S. Food and Drug Administration (FDA).

U.S. and European approaches to the protection of GIs

Geographical indication (GI): an indication that identifies a product as originating in the territory of a country, or from a region or locality within that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin. Examples of GIs from the United States include “Florida” for oranges, “Idaho” for potatoes, “Vidalia” for onions, and “Washington State” for apples. GIs are protected under federal trademark law and under common law.

Protected Designation of Origin (PDO): an indication used in the European Union for names of products that come from a specific region and follow a particular production process. The raw ingredients come from the region of origin where all steps of production take place. An example is “Roquefort” for a type of cheese produced in Roquefort-sur-Soulzon, France.

Protected Geographical Indication (PGI): an indication used in the European Union for names of products that come from a specific region and follow a particular production process. For PGIs, at least one stage of production, processing or preparation must take place in the region identified.

For more information about the protection of GIs in the United States and abroad, visit the USPTO’s [Geographical Indications webpage](#).

The FDA regulation does not require the cheese to come from a specific place, but only that the cheese labeled as gruyere must be prepared according to the specifications set out in the regulation (see 21 C.F.R. §133.149).

Federal regulations have probative value on the question of genericness. FDA regulations inform manufacturers, packers, and distributors of the name to be placed on labels for cheeses having certain characteristics that meet the regulatory standards. They explain when and under what circumstances cheese for sale in the United States, especially cheese produced domestically, may be labeled “gruyere” and offered as such to the purchasing public. While the ultimate consumers of cheese likely do not know of these regulations, consumers are affected by the regulations because they govern the labels that consumers see in stores, in advertising, and on webpages.

Findings: “Gruyere” is generic

Finding the genus of the goods to be “cheese,” and members of the general public who purchase or consume cheese as the relevant public, and upon consideration of the evidence, in 2020 the TTAB concluded that GRUYERE is a generic term for a type of cheese in the United States. (*International Dairy Foods Ass’n v. Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère*, Opp. No. 91232472 (TTAB 2020). (The TTAB did not need to reach the second claim in the opposition, the “failure to control” claim).

“Decades of importation, production, and sale of cheese labeled GRUYERE produced outside the Gruyère region ... have eroded the meaning of that term and rendered it generic.”

In response, the European consortiums filed a complaint in the United States District Court for the Eastern District of Virginia challenging the TTAB decision. The District Court reviewed the TTAB’s decision de novo and considered the defendants’ motion for summary judgment. After evaluating the evidence, supplemented factual record, and following additional discovery, the District Court considered the question whether cheese purchasers in the United States understand the term “gruyere” to refer to a specific type of cheese produced in the Gruyère region of Switzerland and France, or whether cheese purchasers in the United States understand “gruyere” to be a generic term that refers to a type of cheese regardless of where it is produced.

In its analysis, the District Court highlighted that the FDA’s standard of identity for gruyere presented strong evidence that it is a generic term and that the primary significance of the term is to identify a type of cheese, not cheese from a particular geographic origin. The Court noted that “the term GRUYERE may have in the past referred exclusively to cheese from Switzerland and France. However, decades of importation, production, and sale of cheese labeled GRUYERE produced outside the Gruyère region of Switzerland and France have eroded the meaning of that term and rendered it generic.” (*Interprofession du Gruyère v. U.S. Dairy Export Council*, 575 F.Supp.3d 627, 649 (2021)). The European consortiums’ appeal to the Fourth Circuit Court of Appeals followed.

Although the French and Swiss consortiums argued that the cheese has been made in the Gruyère region since the 12th century and is uniquely associated with it, the Fourth Circuit observed that the U.S. consumer did not necessarily conclude that cheese labeled gruyere originated in Switzerland or France. The Circuit Court disagreed with the District Court for inferring that the majority of imported gruyere-labeled cheese did not originate in Switzerland and France, but ultimately found that the record did provide evidence of fairly widespread labeling of gruyere cheese originating in other countries, including the United States, Germany, and Austria.

A success for U.S. producers

The Circuit Court noted that cheese—regardless of its location of production—has been labelled and sold as gruyere in the United States for decades and that U.S. consumers understand “gruyere” to refer to a type of cheese, which renders the term generic. No further appeal was lodged by the European consortiums. Therefore, registration was not granted. As a result, cheese originating outside the Gruyère region of Switzerland and France may be labeled “gruyere” in the United States. ■ ■ ■

This report was prepared by the USPTO’s Office of Policy and International Affairs. All information was accurate as of the date of publication, January 2024. For information on the USPTO’s engagement with current international developments that deal with intellectual property (IP) and IP policy, including international trademark policy, visit the USPTO’s [IP policy webpage](#). To keep informed about the latest development in IP policy at the USPTO, subscribe to receive [IP Policy and International Affairs Alerts](#) by email.