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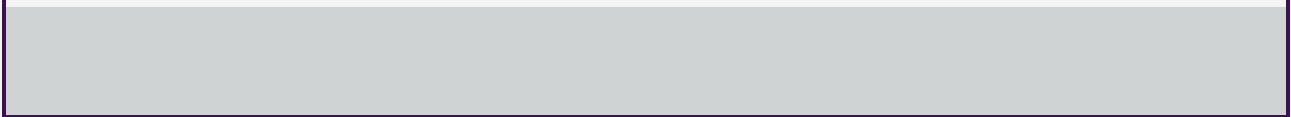
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## **WOULD A PICNIC BE COMPLETE WITHOUT GRUYÈRE CHEESE FROM...WISCONSIN?**

By: [Monica Riva Talley](#) and \*Zaynab Salem

PARMIGIANO-REGGIANO cheese and CHAMPAGNE sparkling wine. These are not only delicious products, welcome at any well-appointed summer picnic, but also geographical certification marks – a subset of trademarks limited to use by those whose products originate from, and meet the standards set by, designated governing bodies. The governmental body, or government-authorized entity, is also tasked with ensuring that all qualified parties in the region are free to use the designation, and to discourage improper or otherwise detrimental uses of the certification mark.

For example, most are familiar with the requirement that CHAMPAGNE be made in the Champagne region of northern France, and meet the strict regulations of the [Champagne appellation](#). Similarly, the Italian government carefully regulates use of the mark [PARMIGIANO-REGGIANO](#) to those made exclusively in the Italian regions of Parma or Reggio Emilia, and that meet the specific criteria and standards of the cheese.

Hoping to follow in the footsteps of other famous food designations, Switzerland's Interprofession du Gruyère and France's Syndicat Interprofessionnel du Gruyère groups sought to register a certification mark for the term "Gruyère," arguing that the mark certifies that the cheese is from the Gruyère region of Switzerland and France. The joint applicants enforce the certification rules for the production of Gruyère cheese in Switzerland and France, respectively. The U.S. Dairy Export Council and other American groups filed notices of opposition, arguing that "Gruyère" is a generic term. On August 5, 2020, the TTAB issued its precedential decision in this case, finding that "Gruyère" is generic in the U.S. for a type of cheese. (U.S. Dairy Export Council et al. v. Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère, 2020 USPQ2d 10892 (TTAB 2020) [precedential]).

The decision is interesting in that it turned on the volume and nature of the evidence for each side, eventually leading to the decision that U.S. "purchasers and consumers of cheese understand the term 'Gruyère' as a designation that primarily refers to a category within the genus of cheese that can come from anywhere." Even though the Applicants provided significant evidence that the term "Gruyère" derives from a geographic region in Switzerland; has been made in Switzerland and France for hundreds of years; and had been given a Protected Designation of Origin (PDO) by the European Union, the Swiss government, and the French government, this was not sufficient to demonstrate how U.S. consumers view the term.

Instead, the Board was persuaded by dictionary definitions describing Gruyère as a cheese type; media references ("Wisconsin Gruyère"); trade publications; internet evidence referencing "American-made Gruyère"; the Code of Federal Regulations (CFR) that provides a standard of identity for "Gruyère cheese," without reference to origin; USDA statistics showing importation of processed Gruyère from various countries; and witness testimony regarding importation and sale of Gruyère cheese. On balance, the Board found that the evidence weighed in favor of finding that U.S. consumers view Gruyère as a category of cheese, versus cheese originating from a certain geographic region.

So, what is the takeaway for entities on either side of the geographical equation? As for any trademark, the most important consideration in the U.S. is how a term is understood by U.S. consumers. If you are looking to protect a geographic certification mark in the U.S., the best plan is to think proactively, and try to take action before the horse is out of the barn and it becomes a generic term.

*\*2020 Summer Associate Zaynab Salem contributed to this article.*

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