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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91232427
Party	Defendant Interprofession du GruyÃ¨re, and Syndicat Interprofessionnel du GruyÃ¨re
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTERNATIONAL DAIRY FOODS
ASSOCIATION, U.S. DAIRY EXPORT
COUNCIL, ATALANTA CORORATION, and
INTERCIBUS INC.,

Opposers,

v.

INTERPROFESSION DU GRUYÈRE,
and SYNDICAT
INTERPROFESSIONEL DU
GRUYÈRE,

Applicants.

Opposition No. 91232427
Consolidated with Opposition Nos.
91232442, 91232446, and 91232448

APPLICANTS' STATEMENT OF OBJECTIONS TO OPPOSERS' EVIDENCE

Applicants Interprofession du Gruyère and Syndicat Interprofessionel du Gruyère (together, "Applicants") herein state their objections to certain evidence sought to be introduced in these consolidated proceedings by Opposers International Dairy Foods Association, U.S. Dairy Export Council, Atalanta Corporation, and Intercibus Inc. (together, "Opposers").

During its testimony and rebuttal periods in these proceedings, Opposers submitted the following evidence: (i) the Declaration of Shawna Morris ("Morris Decl.") (Dkt. # 23-26); and (ii) Opposers' First Revised Notice of Reliance (Dkt. # 40).

As discussed below, Applicants object to (i) certain exhibits Opposers have attempted to introduce into evidence through the declaration of Shawna Morris, and (ii) certain exhibits Opposers have attempted to introduce into evidence through their First Revised Notice of Reliance. Applicants respectively request that the Board strike the evidence challenged herein or accord it limited or no weight.

DEFINITIONS

1. “Hearsay” means a statement the declarant did not make while testifying in the current proceeding, which has been offered in evidence to prove the truth of the matter asserted in the statement. Fed. R. Evid. 801(c). Hearsay is not admissible evidence. Fed. R. Evid. 802.
2. “No Personal Knowledge” means the declarant has not shown that he or she has personal knowledge of the information contained in the exhibit or testimony submitted. “A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Fed. R. Evid. 603.
3. “No Foundation” means the attorney asking the question has not shown that the witness would be in a position to answer the question or that the declarant has failed to satisfy the requirement of authenticating or identifying an item of evidence. “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a).
4. “Irrelevant” means the evidence is not relevant to the claims or defenses by either party in this proceeding. Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Fed. R. Evid. 401. Irrelevant evidence is not admissible. Fed. R. Evid. 402.
5. “Best Evidence Rule” means “[a]n original writing, recording, or photograph is required in order to prove its content,” unless the Federal Rules of Civil Procedure or a federal statute provide otherwise. Fed R. Evid. 1002.

ARGUMENT

1. **Objection to Declaration of Shawna Morris Exhibits**

Applicants seek to exclude exhibits attempted to be entered into evidence through Ms. Morris's declaration as discussed below. Ms. Morris states that these exhibits were contained in Opposers' files and produced to Applicants. However, the fact that the exhibits were produced or are claimed to be "business records" does not mean that they are admissible under the Federal Rules of Evidence. Because none of the exhibits were authored by Ms. Morris herself, and she has not shown that she has personal knowledge of the facts in those exhibits, they are barred by a number of evidentiary rules including Federal Rules of Evidence 603, 901, and 802.

Pursuant to Federal Rule of Evidence 603, "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." Fed. R. Evid. 603. Ms. Morris does not testify that she has personal knowledge of any of the information contained in the exhibits.

Because Ms. Morris does not have personal knowledge of the information contained in the exhibits, the exhibits also lack foundation, since Ms. Morris cannot authenticate any of the exhibits. Fed. R. Evid. 901.

Finally, all of the exhibits constitute Hearsay and are inadmissible under Federal Rule of Evidence 802. In an apparent attempt to suggest the exhibits are subject to the "business records exception" of Rule 803(6), Ms. Morris states "[i]t is the regular practice of USDEC to research and collect such information and documents as is needed and keep records of the results in the ordinary course of business on matters of concern to our membership." However, merely collecting reports and other documents from third parties and keeping them in a company's files does not allow them to be admitted under any exception the hearsay rule. None of the exhibits

are actually records “of a regularly conducted activity,” as required by Rule 803(6). There is no showing that the records were “made at or near the time by – or from information transmitted by – someone with knowledge,” as required by Rule 803(6)(A). Nor is there any showing that “making the record was a regular practice of that activity,” as required by Rule 803(6)(C). Note that the Rule refers to “making” the record, not merely collecting or storing other company’s documents. Opposers’ documents include materials that Opposers have collected from third-party sources for the specific purpose of opposing Applicants’ registration. These are hearsay.

Applicants thus request that the Board exclude the following exhibits from Ms. Morris’s declaration:

Exhibit No.	Description of Exhibit	Basis for Objection
1	Dairy Farmers of America ingredients label for Process Gruyere Style Product	No Personal Knowledge No Foundation Hearsay
2	Tasting notes sheet for Gruyere Surchoix from Roth Kase USA and a 2004 Riesling from Germany (Mandarin language)	No Personal Knowledge No Foundation Hearsay
3	Tasting notes sheet for Gruyere Surchoix from Roth Kase and a late harvest Riesling from CA (English language)	No Personal Knowledge No Foundation Hearsay
4	Tasting notes sheet for Gruyere Surchoix from Roth Kase USA and a 2004 Riesling from Germany (English language)	No Personal Knowledge No Foundation Hearsay
5	Recipe for Chili U.S. Gruyere Cheese Baked Cups in English and Mandarin	No Personal Knowledge No Foundation Hearsay
6	Ingredients label for Boar's Head Brand Blanc Grue Gruyere Cheese distributed by Brunckhorst Co. in NY	No Personal Knowledge No Foundation Hearsay
7	Boar's Head Brand Blanc Grue Gruyere cheese label	No Personal Knowledge No Foundation Hearsay

8	Recipes from www.usapeecme.org website in Mandarin	No Personal Knowledge No Foundation Hearsay
9	U.S. Dairy Export Council informational brochure, U.S. Specialty Cheeses, An Introduction to the Heritage, Quality & Trends	No Personal Knowledge No Foundation Hearsay
10	May 25, 2007 Cheese Market News article regarding Gruyere.	No Personal Knowledge No Foundation Hearsay
11	Boar's Head Brand Hickory Smoked Gruyere cheese label	No Personal Knowledge No Foundation Hearsay
12	Boar's Head Brand Hickory Smoked Gruyere cheese ingredient label	No Personal Knowledge No Foundation Hearsay
13	Price tag for the Boar's Head Brand Hickory Smoked Gruyere cheese	No Personal Knowledge No Foundation Hearsay
14	Boar's Head Brand Blanc Grue Gruyere cheese label with price tag	No Personal Knowledge No Foundation Hearsay
15	Ingredients label for Boar's Head Brand Blanc Grue Gruyere Cheese distributed	No Personal Knowledge No Foundation Hearsay
16	Canada Import Statistics From United States chart including gruyere	No Personal Knowledge No Foundation Hearsay
17	EU Imports from United States chart	No Personal Knowledge No Foundation Hearsay
18	List of WMMB store audits where Boar's Head Brand Gruyere was found	No Personal Knowledge No Foundation Hearsay
19	April 27, 2011 statement of objection from Dairy Australia	No Personal Knowledge No Foundation Hearsay
20	List of U.S. restaurant operators that mention Gruyere on the menu	No Personal Knowledge No Foundation Hearsay
21	List of Wisconsin-identified Gruyere items in WMMB store audits	No Personal Knowledge No Foundation Hearsay

22	Lists of selected exact weight products and random weight brands classified as Gruyere in WMMB's IRI database	No Personal Knowledge No Foundation Hearsay
23	August 2005 USDA Food Standards and Labeling Policy Book	No Personal Knowledge No Foundation Hearsay
24	Peterson Specialty Cheese Catalog	No Personal Knowledge No Foundation Hearsay
25	Examples of companies producing cheese varieties threatened by GI Restrictions	No Personal Knowledge No Foundation Hearsay
26	U.S. import statistics for Gruyere 2004-2009, by quantity	No Personal Knowledge No Foundation Hearsay
27	U.S. import statistics for Gruyere 2004-2009, in U.S. dollars	No Personal Knowledge No Foundation Hearsay
28	May 10, 2016 Letter of Protest Memorandum from the attorney advisor to the examining attorney	No Personal Knowledge No Foundation Hearsay
29	Letter of Protest dated 9/12/2016 by the Consortium for Common Food Names	No Personal Knowledge No Foundation Hearsay
30	Definition of gruyere from collinsdictionary.com	No Personal Knowledge No Foundation Hearsay
31	Definition of gruyere from merriam-webster.com	No Personal Knowledge No Foundation
32	Definition of gruyere from oxforddictionaries.com	No Personal Knowledge No Foundation Hearsay
33	Definition of gruyere from thefreedictionary.com	No Personal Knowledge No Foundation Hearsay
34	Evidence of the term gruyere being used at restaurants in the United States	No Personal Knowledge No Foundation Hearsay

35	Recipes using gruyere printed in U.S. newspapers and various publications	No Personal Knowledge No Foundation Hearsay
36	U.S. Food and Drug Administration requirements for specific standardized cheese and related products	No Personal Knowledge No Foundation Hearsay
37	List of restaurant operators that currently mention gruyere on the menu	No Personal Knowledge No Foundation Hearsay
38	Chart showing the source of gruyere sold in various grocery stores in the U.S.	No Personal Knowledge No Foundation Hearsay
39	List of Wisconsin-identified gruyere items found in WMMB store audits	No Personal Knowledge No Foundation Hearsay
40	Chart showing the source of gruyere currently sold by various food service operators in U.S.	No Personal Knowledge No Foundation Hearsay
41	Results of search in USDA database showing source of processed gruyere imported to U.S.	No Personal Knowledge No Foundation Hearsay
42	Websites containing various Wisconsin gruyere cheeses for purchase	No Personal Knowledge No Foundation Hearsay
43	Informa Economics IEG, <i>Assessing Potential Impact of Geographical Indications for Common Cheeses on the US. Dairy Sector</i>	No Personal Knowledge No Foundation Hearsay

2. Objection to Portions of Opposers' First Revised Notice of Reliance

The vast majority of the exhibits attached to Opposers' First Revised Notice of Reliance constitute hearsay. Fed. R. Evid. 802.

Applicants thus request that the Board exclude certain exhibits attached to Opposers' First Revised Notice of Reliance (Dkt. # 40) for the reasons stated below:

a. *Official records*

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
068	A true and correct copy of the status, certificate and excerpts from the file history of U.S. Trademark registration 4,398,395	This application is relevant because it was pursued by Interprofession du Gruyère (IDG), one of the Applicants in this proceeding, who represented that gruyere must be produced in Switzerland and nowhere else.	
069	A true and correct copy of the status and excerpts from the file history of U.S. Certification Mark Application No. 85/091,899	This application is relevant because it was pursued by IDG, who abandoned the application following multiple office actions finding the proposed mark, LE GRUYERE, merely descriptive and generic.	
070	A true and correct copy of the status and registration certificate of U.S. Trademark Registration 1,026,885	This application is relevant because it specifically identifies gruyere as "being a type of cheese produced in France."	Irrelevant; Hearsay
071	A true and correct copy of the status of U.S. Trademark Registration 0,220,841	This application is relevant because it specifies that the gruyere cheese it is describing is made in Switzerland and disclaims the phrase "Gruyere Extra 3 Fin Marque."	Irrelevant; Hearsay
072	A true and correct copy of the status and registration certificate of U.S. Trademark Registration 0,210,879	This application is relevant because it specifies that the gruyere cheese it is describing is made in Switzerland and disclaims the phrase "Imported Swiss Gruyere Cheese."	Irrelevant; Hearsay

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
073	A true and correct copy of the status and registration certificate of U.S. Trademark Mark 0,152,653	This application is relevant because it specifies that the gruyere cheese it is describing is made in Switzerland and disclaims the phrase "Gruyere Extra Fin Sans Croute."	Irrelevant; Hearsay

b. *Printed publications and internet materials*

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
074	2018 World Championship Cheese Contest Results for class "47. Gruyere"	These results are relevant because they show the participation of a gruyere cheese produced in Denmark and none produced in France.	Hearsay
075	2016 World Championship Cheese Contest Results for class "28. Gruyere"	These results are relevant because they show that no gruyere produced in France participated in this contest in category "28. Gruyere."	Hearsay
076	2014 World Championship Cheese Contest Results for class "27. Gruyere"	These results are relevant because they show the participation of multiple gruyere cheeses produced outside of Switzerland and France and none produced in France.	Hearsay
077	2012 World Championship Cheese Contest Results for class "25, Gruyere"	These results are relevant because they show the participation of multiple gruyere cheeses produced outside of Switzerland and France and none produced in France.	Hearsay

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
078	2010 World Championship Cheese Contest Results for class "25. Gruyere"	These results are relevant because they show the participation of multiple gruyere cheeses produced outside of Switzerland and France and none produced in France.	Hearsay
079	Recipe for Chili U.S. Gruyere Cheese Baked Cups in English and Mandarin	This document is relevant as the ingredients identify gruyere as a U.S. cheese	Hearsay
080	Recipes from www.usapeecme.org website in Mandarin	This document is relevant as the ingredients identify gruyere as a U.S. cheese	Hearsay
081	U.S. Dairy Export Council informational brochure, U.S. Specialty Cheeses, An Introduction to the Heritage, Quality & Trends	This document is relevant as it identifies gruyere as being made in the United States	Hearsay
082	May 25, 2007 Cheese Market News article regarding Gruyere.	This document is relevant as it identifies gruyere as being made in the United States	Hearsay
083	August 2005 USDA Food Standards and Labeling Policy Book	This document is relevant as it describes gruyere cheese as closely resembling Swiss cheese and does not indicate geographic origin	Hearsay; Irrelevant
084	Peterson Specialty Cheese Catalog	This document is relevant as it does not indicate geographic origin of gruyere	Hearsay
085	Definition of gruyere from collinsdictionary.com	This document is relevant as it generically describes gruyere	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
086	Definition of gruyere from merriamwebster.com	This document is relevant as it generically describes gruyere	
087	Definition of gruyere from oxforddictionaries.com	This document is relevant as it generically describes gruyere	
088	Definition of gruyere from thefreedictionary.com	This document is relevant as it generically describes gruyere	
089	Evidence of the term gruyere being used at restaurants in the United States	This document is relevant as it generically describes gruyere's various uses in United States restaurants	Hearsay within hearsay; No evidence that Gruyere is not referring to genuine Gruyere cheese.
090	Recipes using gruyere printed in U.S. newspapers and various publications	This document is relevant as it shows gruyere as being made in Wisconsin	Hearsay
091	U.S. Food and Drug Administration requirements for specific standardized cheese and related products	This document is relevant as it generically describes gruyere and does not limit the cheese to a place of origin	Hearsay
092	Results of search in USDA database showing source of processed gruyere imported to U.S.	This document is relevant as it shows gruyere imports into the United States	Hearsay
093	Websites containing various Wisconsin gruyere cheeses for purchase	This document is relevant as it shows gruyere made in Wisconsin	Hearsay
094	Informa Economics IEG, Assessing the Potential Impact of Geographical Indications for Common Cheeses on the U.S. Dairy Sector	This document is relevant as it discusses common cheese in the United States	Irrelevant; Hearsay

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
095	Atalanta Corporation brochure for Ammerlander cheese including Gruyere Loaf	This document is relevant as it advertises gruyere for sale from a country other than France or Switzerland	Hearsay
096	Swiss specifications for Gruyere	This document is relevant as it identifies gruyere as a type of cheese being produced in Switzerland	
097	French specifications for Gruyere	This document is relevant as it identifies gruyere as a type of cheese being produced in France	
098	Excerpts from the Guide du Fromage regarding gruyere	This document is relevant as it describes gruyere as being a generic name	Hearsay
099	Boar's Head product description for Blanc Gru Gruyere Cheese from boarshead.com	This document is relevant as it shows a United States-produced gruyere cheese	Hearsay
100	Denninger's Foods of the World sales brochure	This document is relevant as it shows a gruyere produced in Austria	Hearsay
101	Caribou Coffee online menu including a ham and gruyere pretzel roll	This document is relevant as it shows a gruyere produced in Austria	Hearsay
102	Todaytopreviews.com article: Best Gruyere Cheese You Should Include in Your Next Recipe	This document is relevant as it describes gruyere as a cheese originally produced in Switzerland.	Hearsay
103	Igourmet.com information on the history of gruyere cheese	This document is relevant as it describes gruyere as a cheese made in Switzerland, France, Austria and the United States	Hearsay

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
104	West Allis Cheese and Sausage Shoppe product page on Grand Cru Gruyere Reserve from wacheesegifts.com	This document is relevant as it describes gruyere as a cheese made in the United States	Hearsay
105	Excerpts from the Wisconsin Milk Marketing Board publication Cheese At Foodservice Study Course	This document is relevant as it describes gruyere as a cheese made in the United States	Hearsay
106	Excerpts from The Cheese Lover's Companion on gruyere	This document is relevant as it describes gruyere as a cheese made in the United States	Hearsay
107	Excerpts from The Cheese Bible on gruyere	This document is relevant as it describes gruyere as also made in Greece and Italy	Hearsay
108	Excerpts from the Handbook of Cheese from Germany	This document is relevant as it describes gruyere as being made in Austria	Hearsay; irrelevant as this German document and is not translated, and there is no showing how this would be relevant to this case about understanding of the term GRUYÈRE in the U.S.

c. Applicants' written discovery responses

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
109	A true and correct copy of Responses of IDG to Opposers' First Set of Discovery Requests	These written discovery responses are relevant because they relate to the application and proceeding under consideration.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
110	A true and correct copy of Responses of SIDG to Opposers' First Set of Discovery Requests	These written discovery responses are relevant because they relate to the application and proceeding under consideration.	
111	A true and correct copy of Combined Responses of Applicants' to Opposers' Second Set of Discovery Requests	These written discovery responses are relevant because they relate to the application and proceeding under consideration.	

d. *Applicants' document productions*

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
112	Stipulation of the parties agreeing to authenticity of evidence	This stipulation is relevant because it establishes the authenticity of the documents produced by Applicants in response to Opposers' discovery requests.	
113	A true and correct copy of a table showing sales of French gruyere in the United States, prepared by SIDG in response to Opposers' interrogatories (GRUY18)	This table is relevant, because it shows the amount of sales of French gruyere in the United States.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
114	True and correct copies of annual reports and tables produced by IDG in response to Opposers' interrogatories showing, among other things, sales of Swiss Gruyere in the United States (GRUY28-42)	These reports are relevant, because they show the amount of sales of Swiss gruyere in the United States.	
115	True and correct copies of brochures produced by IDG in response to Opposers' document production requests (GRUY44-53, 74, 108-09)	These brochures are relevant because they discuss the origin of gruyere cheese, which allegedly must be in Switzerland.	
116	A true and correct copy of an advertisement created by IDG and produced by IDG in response to Opposers' document production requests (GRUY86)	This advertisement is relevant because it shows that Applicant IDG is aware of the results of the World Championship Cheese Contest.	
117	A true and correct copy of a letter sent on behalf of IDG to iGourmet.com, Inc. (GRUY354-55)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced in France.	
118	A true and correct copy of a letter sent on behalf of IDG to Swiss-American, Inc. (GRUY371-75)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
119	A true and correct copy of a letter dated June 12, 2013 sent on behalf of IDG to Red Apple Cheese, LLC (GRUY425-26)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland.	
120	A true and correct copy of a letter dated December 23, 2014 sent on behalf of IDG to Dairyfood USA Inc. (GRUY427-431)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland and its reliance on actions of Emmi Roth USA, Inc. to further support its position.	
121	A true and correct copy of a letter dated May 23, 2017 sent on behalf of IDG to Acme Valley Foods (GRUY185-186)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
122	A true and correct copy of a letter Dated October 9, 2012 sent on behalf of IDG to Atalanta Corporation (GRUY438-439)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland.	
123	A true and correct copy of an email dated December 18, 2012 sent on behalf of IDG to Atalanta Corporation (GRUY1446-1449)	This email is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland and its reliance on actions of Emmi Roth USA, Inc. to further support its position.	
124	A true and correct copy of a letter dated August 8, 2014 sent on behalf of IDG to Balducci's Food Lover's Market (GRUY443-446)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
125	A true and correct copy of a letter dated September 19, 2017 sent on behalf of IDG to Caputo Cheese Market, Inc. (GRUY301-306)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
126	A true and correct copy of a letter dated March 27, 2008 sent on behalf of IDG to Finlandia Cheese, Inc. (GRUY120-121)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland.	
127	A true and correct copy of an email dated July 24, 2016 sent on behalf of IDG to Finlandia Cheese, Inc. (GRUY1518-1522)	This email is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
128	A true and correct copy of a letter dated July 30, 2014 sent on behalf of IDG to Food Distributors, Inc. (GRUY232-234)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
129	A true and correct copy of a letter dated November 5, 2013 sent on behalf of IDG to Frank Brunckhorst Co., L.L. C. (GRUY229-231)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland and its reliance on actions of Emmi Roth USA, Inc. to further support its position.	
130	A true and correct copy of a letter dated September 10, 2014 sent on behalf of IDG to InterSource Inc. (GRUY348-350)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
131	A true and correct copy of a letter dated January 15, 2014 sent on behalf of IDG to Keystone Farm L.L.C. (GRUY263-265)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
132	A true and correct copy of a letter dated January 12, 2016 sent on behalf of IDG to King Kullen Grocery Co., Inc. (GRUY266-269)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
133	A true and correct copy of a letter dated August 8, 2017 sent on behalf of IDG to Mandi Foods, Inc. (GRUY213-217)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
134	A true and correct copy of a letter dated November 5, 2013 sent on behalf of IDG to Pacific Cheese Co., Inc. (GRUY447-449)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland and its reliance on actions of Emmi Roth USA, Inc. to further support its position.	
135	A true and correct copy of a letter dated January 3, 2017 sent on behalf of IDG to Peterson Company (GRUY196-200)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
136	A true and correct copy of a letter dated December 23, 2016 sent on behalf of IDG to Ralphs Grocery Company (GRUY341-347)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
137	A true and correct copy of a letter dated December 20, 2013 sent on behalf of IDG to Rumiano Cheese Company (GRUY201-203)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
138	A true and correct copy of a letter dated January 15, 2014 sent on behalf of IDG to Swiss-American, Inc. (GRUY371-374)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
139	A true and correct copy of a letter dated January 3, 2017 sent on behalf of IDG to Tony's Fine Foods, Inc. (GRUY222-228)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
140	A true and correct copy of a letter dated December 20, 2013 sent on behalf of IDG to Trader Joe's (GRUY175-184)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
141	A true and correct copy of a letter dated July 30, 2014 sent on behalf of IDG to Wegmans Food Markets (GRUY486-493)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland and its reliance on actions of Emmi Roth USA, Inc. to further support its position.	
142	A true and correct copy of a letter dated January 29, 2014 sent on behalf of IDG to Wisconsin Milk Marketing Board, Inc. (GRUY270-272)	This letter is relevant because it shows Applicant IDG's reliance on actions of Emmi Roth USA, Inc. to support its position.	
143	A true and correct copy of a letter dated February 17, 2016 sent on behalf of IDG to ZOI Foods Corp (GRUY190-191)	This letter is relevant because it shows Applicant IDG's position that gruyere cannot be produced anywhere other than Switzerland.	
144	A true and correct copy of European Commission publication of an application for protection of the term "Gruyère" (GRUY535-40)	This publication is relevant because it shows the conflict between French and Swiss applications for geographic protection of gruyere marks.	
145	A true and correct copy of Swiss specifications for the Protected Designation of Origin for Gruyère (GRUY541-62)	This specification is relevant because it shows the conflict between French and Swiss applications for geographic protection of gruyere marks.	

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
146	A true and correct copy of an agreement between IDG and Emmi Roth USA, Inc. and English translation thereof (GRUY1444-45)	This agreement is relevant because it shows the relationship between IDG and Emmi Roth USA, Inc., and IDG's failure to control Emmi Roth USA, Inc.'s continued sale of domestically produced gruyere products, despite its claims to have persuaded Emmi Roth USA, Inc. to stop making such sales.	

e. *Declaration of John Umhoefer and document productions of Wisconsin Cheese Makers Association*

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
147	Declaration of John Umhoefer	This declaration is relevant because it establishes the authenticity of the documents produced by Wisconsin Cheese Makers Association in response to Opposers' subpoena.	Irrelevant, No Foundation, No Personal Knowledge, fails to comply with requirements for establishing an exception to the Hearsay rule for attached documents.
148	A true and correct copy of a selection of the 2016 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show that no gruyere produced in France participated in this contest in category "28. Gruyere."	Hearsay, No Foundation, No Personal Knowledge.
149	A true and correct copy of a selection of the 2014 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "27. Gruyere."	Hearsay, No Foundation, No Personal Knowledge.

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
150	A true and correct copy of a selection of the 2012 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "25. Gruyere."	Hearsay, No Foundation, No Personal Knowledge.
151	A true and correct copy of a selection of the 2010 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "25. Gruyere."	Hearsay, No Foundation, No Personal Knowledge.
152	A true and correct copy of a selection of the 2008 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "26. Gruyere."	Hearsay, No Foundation, No Personal Knowledge.
153	A true and correct copy of a selection of the 2006 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "25. Smear Ripened Cheeses."	Hearsay, No Foundation, No Personal Knowledge.
154	A true and correct copy of a selection of the 2004 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show a United States-produced gruyere cheese participating in category "20. Smear Ripened Cheeses."	Hearsay, No Foundation, No Personal Knowledge.
155	A true and correct copy of a selection of the 2002 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show multiple non-Swiss- and non- French-produced gruyere cheeses participating in category "17. Smear Ripened Cheeses."	Hearsay, No Foundation, No Personal Knowledge.

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
156	A true and correct copy of a selection of the 2000 World Championship Cheese Contest Winners, Scores & Highlights	These results are relevant because they show a United States-produced gruyere winning Best of Class and an Australian-produced gruyere winning Second Award in category "18. Open Class/Hard Cheese," and no Swiss- or French-produced gruyere cheeses participating in that category.	Hearsay, No Foundation, No Personal Knowledge.
157	A true and correct copy of a selection of the 1998 World Championship Cheese Contest Winners	These results are relevant because they show a United States-produced gruyere cheese winning third award in category "23. Open Class/Hard Cheese."	Hearsay, No Foundation, No Personal Knowledge.

f. *Declaration of Matthias Kunz and document production of Emmi Roth USA, Inc.*

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
158	Declaration of Matthias Kunz and accompanying exhibits	This declaration is relevant because it establishes the authenticity of the documents produced by Emmi Roth USA, Inc., in response to Opposers' subpoena.	Irrelevant, Hearsay, No Foundation, No Personal Knowledge, Fails to comply with requirements for establishing an exception to the hearsay rule for attached documents
159	A true and correct copy of Emmi Roth USA, Inc.'s full document productions in response to Opposers' subpoena (ERU00000001-32)	These document productions are relevant because Emmi Roth USA, Inc. produced them in response to Opposers' subpoena.	Hearsay, No Foundation, No Personal Knowledge

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
160	Confidential document submitted separately		Irrelevant, Hearsay, No Foundation, No Personal Knowledge, Fails to comply with requirements for establishing an exception to the hearsay rule for attached documents

3. Objection to Portions of Opposers' Second Notice of Reliance

The vast majority of the exhibits attached to Opposers' Second Notice of Reliance constitute hearsay. Fed. R. Evid. 802.

Applicants thus request that the Board exclude certain exhibits attached to Opposers' Second Notice of Reliance (Dkt. # 39) for the reasons stated below:

a. Internet Materials

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
161	Page from www.ralphs.com (Ralph's Supermarkets) showing multiple gruyere products (specifically, Boar's Head brand, which products are not made in Switzerland or France) being sold online.	Shows continued sale of non-Swiss, non-French gruyere by nonparties identified in the declaration of Philippe Bardet as having been contacted by Applicant.	Hearsay
162	Page from www.boarshhead.com (Boar's Head) showing Wisconsin origin of Boar's Head brand gruyere.	Shows non-Swiss, non-French origin of cheese sold by Ralph's, as identified in Trial Exhibit 161.	Hearsay

Exhibit No.	Opposers' Description of Attached Document	Opposers' Stated Relevance	Applicants' Evidentiary Objections
163	Page from www.mandifoods.com (Mandi Foods) showing Apple Smoked gruyere cheese, which is not made in Switzerland or France, being sold online.	Shows continued sale of non-Swiss, non-French gruyere by nonparties identified in the declaration of Philippe Bardet as having been contacted by Applicant.	Hearsay
164	Pages from www.redapplecheese.com (Red Apple Cheese) showing Wisconsin origin of Apple Smoked gruyere cheese.	Shows non-Swiss, non-French origin of cheese sold by Mandi foods, as identified in Trial Exhibit 163.	Hearsay
165	Page from www.foodinno.com (Food Innovations, Inc.) showing gruyere being sold online which was imported from Austria.	Shows continued sale of non-Swiss, non-French gruyere by nonparties identified in the declaration of Philippe Bardet as having been contacted by Applicant.	Hearsay

4. Objection to Certain Gellert Testimony and Exhibits

Applicants seek to exclude certain portions of the testimonial deposition of Thomas Gellert and certain exhibits attempted to be entered into evidence through Mr. Gellert's deposition as discussed below.

Applicants request that the Board exclude the following portions of Mr. Gellert's testimony:

<i>Objectionable Testimony</i>	<i>Basis of Objection</i>
Page 17, line 15-17	• Hearsay
Page 18, line 5-10	• Hearsay
Page 18, line 13-19	• Hearsay
Page 18, line 22 through Page 19, line 2	• Hearsay

Page 20, line 3-6	<ul style="list-style-type: none"> • Hearsay, No Foundation
Page 21, line 16-22	<ul style="list-style-type: none"> • Best Evidence Rule
Page 23, line 14-24	<ul style="list-style-type: none"> • No Foundation, No Personal Knowledge, Hearsay
Page 24, line 5-13	<ul style="list-style-type: none"> • No Foundation, No personal Knowledge, Hearsay
Page 27, line 21-22	<ul style="list-style-type: none"> • Best Evidence Rule, Hearsay, No Foundation, No Personal Knowledge
Page 28, line 20-21	<ul style="list-style-type: none"> • Hearsay, No Foundation, No Personal Knowledge
Page 29, line 8-14	<ul style="list-style-type: none"> • Hearsay, No Foundation, No Personal Knowledge
Page 29, line 15-16	<ul style="list-style-type: none"> • No Foundation, Hearsay, No Personal Knowledge
Page 29, line 19-20	<ul style="list-style-type: none"> • Hearsay, No Personal Knowledge, No Foundation

Applicants also request that the Board exclude the following exhibits attempted to be made of record through Mr. Gellert:

<i>Objectionable Exhibit</i>	<i>Basis of Objection</i>
46	<ul style="list-style-type: none"> • Hearsay, No Foundation
48	<ul style="list-style-type: none"> • No Foundation

5. Objection to Certain Jaeckle Testimony and Exhibits

Applicants seek to exclude certain portions of the testimonial deposition of Fermo Jaeckle and certain exhibits attempted to be entered into evidence through Mr. Jaeckle's deposition as discussed below.

Applicants request that the Board exclude the following portions of Mr. Jaeckle's testimony:

<i>Objectionable Testimony</i>	<i>Basis of Objection</i>
Page 15, line 13 through page 16, line 20	<ul style="list-style-type: none"> • No Foundation, Hearsay, Best Evidence Rule, No Personal Knowledge, failure to provide an expert report, narrative, not responsive to the question, lay opinion
Page 17, line 20-25	<ul style="list-style-type: none"> • No Foundation, Hearsay, Best Evidence Rule, No Personal Knowledge, failure to provide an expert report, narrative, lay opinion
Page 19, line 11 through page 20, line 1	<ul style="list-style-type: none"> • Hearsay
Page 20, line 2-17	<ul style="list-style-type: none"> • Hearsay; No Personal Knowledge, No Foundation, No Personal Knowledge, lay opinion, failure to provide an expert opinion, question is ambiguous because it is unclear whether deponent is being asked to recite what is in the exhibit or if he is being asked a different question
Page 20, line 25 through page 21 line 2	<ul style="list-style-type: none"> • Form of the question is ambiguous
Page 21, line 24 through page 22, line 4	<ul style="list-style-type: none"> • No Personal Knowledge, No Foundation, Best Evidence Rule, not responsive to the question, lay opinion, no expert opinion
Page 23, line 12-23	<ul style="list-style-type: none"> • Hearsay, Best Evidence Rule, No Personal Knowledge
Page 29, line 1-2	<ul style="list-style-type: none"> • No Foundation, No Personal Knowledge, Best Evidence Rule
Page 38, line 24 through Page 39, line 1	<ul style="list-style-type: none"> • No Foundation, No Personal Knowledge
Page 39, line 7-23	<ul style="list-style-type: none"> • No Personal Knowledge
Page 39, line 24 through Page 40, line 5	<ul style="list-style-type: none"> • No Foundation, No Personal Knowledge, Hearsay, Best Evidence Rule
Page 41, line 19 through Page 42, line 4	<ul style="list-style-type: none"> • Best Evidence Rule

Applicants also request that the Board exclude the following exhibits attempted to be made of record through Mr. Jaekle:

<i>Objectionable Exhibit</i>	<i>Basis of Objection</i>
51, 52	<ul style="list-style-type: none"> • Hearsay; No Foundation
53	<ul style="list-style-type: none"> • Hearsay, No Foundation, No Personal Knowledge, Irrelevant because it is a Canadian website and this is a United States proceeding
54	<ul style="list-style-type: none"> • Hearsay, No Personal Knowledge, No Foundation
55	<ul style="list-style-type: none"> • Hearsay, No Personal Knowledge, No Foundation, Irrelevant because it is a German book in the German language and this is a United States proceeding

CONCLUSION

For the reasons stated herein, Applicants respectfully request that the Board exclude the evidence challenged above or accord it no weight.

Dated: New York, New York
March 22, 2019

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 2019, I caused a true and correct copy of the foregoing **Applicants' Statement of Objections to Opposers' Evidence** to be served by email to Opposers' counsel of record at:

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