

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500

Baxley

Mailed: February 6, 2017

Opposition No. 91232414

Food Distributors, Inc.

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232427

International Dairy Foods Association

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232442

U.S. Dairy Export Council

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232444

Schrieber Foods, Inc.

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232446

Opposition No. 91232414, et al.

Atalanta Corporation

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232448

Intercibus Inc.

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232466

Finlandia Cheese, Inc.

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

Opposition No. 91232470

Red Apple Cheese, LLC

v.

*Interprofession du Gruyère, Syndicat Inter-
professionnel du Gruyère*

(as consolidated)

Andrew P. Baxley, Interlocutory Attorney:

Interprofession du Gruyère, Syndicat Interprofessionnel du Gruyère (“Applicant”) filed an application to register the certification mark GRUYERE in standard

characters for “Cheese” in International Class A.¹ In the eight above-captioned opposition proceedings, Opposers oppose registration of Applicant’s mark on the grounds of (1) genericness and (2) either failure to exercise legitimate control over the use of the mark or abandonment.² Applicant has yet to file an answer in any of the above-captioned proceedings.

In view of the common issues of law and/or fact in the respective proceedings, the Board, in exercising its inherent authority to control the conduct and scheduling of

¹ Application Serial No. 86759759, filed September 17, 2015, based on an assertion of use in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), and alleging 1982 as the date of first use anywhere and 1985 as the date of first use in commerce. The application includes the following certification statement:

The certification mark, as used by persons authorized by the certifier, certifies that the cheese originates in the Gruyère region of Switzerland and France. 1). In Switzerland this region includes the cantons of Fribourg, Vaud, Neuchatel, Jura, and the districts of Courtelary, La Neuveville, Moutier as well as the communes of Ferenbalm, Guggisberg, Mühleberg, Münchenwiler, Rüscheegg and Wahlern of the canton of Bern. 2). In France this region includes the departments of Doubs, Jura, Haute-Saône, Savoie and Haute-Savoie as well as the cantons of Amberieu-en-Bugey, Bellegarde-sur-Valserine, Belley, Brénod, Ceyzériat, Champagne-en-Valromey, Coligny, Collonges, Ferney-Voltaire, Gex, Hauteville-Lompnes, Izernore, Lagnieu, Lhuis, Nantua, Oyonnax-Nord, Poncin, Pont- d'Ain, Saint-Rambert-en-Bugey, Seyssel, Treffort- Cuisiat, Virieu-le-Grand, Péronnas, Oyonnax-Sud, Viriat, Oyonnax, Bourg-en-Bresse in the department of Ain, the cantons of Fontaine-Française, Saint-Jean- de-Losne, Seurre in the department of Côte-d'Or, the cantons of Saint-Laurent-du-Pont and Touvet in the department of Isère, the cantons of Bourbonne-les-Bains, Bourmont, Clefmont, Fayl-la-Forêt, Laferté- sur-Amance, Langres, Longeau-Percey, Val-de- Meuse, Neuilly-l'Evêque, Nogent, Prauthoy, Terre-Natale in the department of Haute-Marne, the cantons of Beaurepaire-en-Bresse, Cuiseaux, Pierre-de-Bresse, Saint-Germain-du-bois in the department of Saône-et- Loire, the cantons of Bains-les-Bains, Darney, Lamarche, Monthureux-sur- Saône, Plombières-les- Bains, Xertigny in the department of Vosges, the cantons of Delle, Fontaine, Giromagny, Rougemont- le-Château, Valdoie, Châtenois -les-Forges, Danjoutin, Beaucort, Grandvillars, Offemont, Belfor in the department of Territoire de Belfort.

² A review of the Board file for Applicant’s involved application indicates that all other remaining extensions of time to oppose filed in connection with that application have expired.

Opposition No. 91232414, et al.

cases on its docket, hereby consolidates the above-captioned proceedings. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511.

The Board file will be maintained in Opposition No. 91232414 as the “parent case.” Because these proceedings are being consolidated prior to joinder of the issues in each proceeding, Applicant should file a separate answer in the Board file for each of the consolidated oppositions before commencing the practice of filing a single copy of all submissions in the parent case.³ Each answer must be filed through the Board’s Electronic System for Trademark Trials and Appeals (“ESTTA”). *See* Trademark Rules 2.106(b)(1) and 2.114(b)(1). Henceforth, the parties otherwise should file only a single copy of all motions and submissions, and each submission should be filed in the parent case only, but caption all consolidated proceeding numbers, listing and identifying the parent case first.

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

In keeping with the Board’s general practice of adopting the schedule in the most recently instituted consolidated proceeding, i.e., Opposition No. 91232470, the following schedule is adopted for these proceedings.

All of Applicant’s Answers Due

3/6/2017

³ The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

Deadline for Discovery Conference	4/5/2017
Discovery Opens	4/5/2017
Initial Disclosures Due	5/5/2017
Expert Disclosures Due	9/2/2017
Discovery Closes	10/2/2017
Plaintiff's Pretrial Disclosures Due	11/16/2017
Plaintiff's 30-day Trial Period Ends	12/31/2017
Defendant's Pretrial Disclosures Due	1/15/2018
Defendant's 30-day Trial Period Ends	3/1/2018
Plaintiff's Rebuttal Disclosures Due	3/16/2018
Plaintiff's 15-day Rebuttal Period Ends	4/15/2018

In addition, Opposers are allowed until **March 6, 2017** to appoint a lead counsel to supervise and coordinate the conduct of Opposers' cases and to provide one point of contact with the Board.⁴ *See* TBMP § 511. Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

⁴ Marie Lavalleye of Covington & Burling LLP is the attorney of record for Opposers Schreiber Foods, Inc. (Opposition No. 91232444), Atalanta Corporation (Opposition No. 91232446), Intercibus Inc. (Opposition No. 91232448), and Finlandia Cheese, Inc. (Opposition No. 91232466).

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 F.R. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- A chart summarizing the affected rules and changes: http://www.uspto.gov/sites/default/files/documents/RulesChart_01_14_17.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by mail. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board’s notice of institution constitutes service of complaints. Trademark Rules 2.101 and 2.111.

Opposition No. 91232414, et al.

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.