

Halloumi vs Falloumi: Firmer protection needed for Cypriot cheese

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Do you produce a specific cheese, in a certain country/area, with specified ingredients and identified by a specific name, and want to avoid parasites?

Well, there are different ways to get decent protection.

The most effective protection is still traditional trademark registration, with the trademark owned by a single company or organisation owned by the producers.

It can easily be combined with specific licensing agreements, both for producers and retailers around the world. Examples include the Swedish hard cheese trademarks 'Greve', 'Herrgårdsost' and 'Prästost'.

A closely related version of the protection is a collective trademark, owned by an organisation and used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organisation.

The EU also provides three ways to protect geographical indications and traditional specialties: protected designation of origin (PDO), protected geographical indication (PGI)—such as the Swedish cheese 'Svecia', and traditional specialties guaranteed (TSG)—such as the Swedish cheese 'Hushållsost'.

Halloumi, a semi-hard, Cypriot cheese basically made from a mixture of goats' and sheep's milk, is another example.

In the EU, 'Halloumi' has been registered as a collective trademark for "cheese" in class 29 since July 2000 (No. 001082965). It is owned by the Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (the Foundation). But how efficient is this trademark?

On February 1, 2018, the Swedish Intellectual Property Office (PRV) published the registration of the trademark Falloumi (No. 543807) for "falafel" in class 29, with the Swedish company Msuvakci AB as the owner.

The Foundation filed an opposition, claiming that Falloumi was confusingly similar to Halloumi, that Halloumi is covered by the "protection of reputation", and that the use of Falloumi would unduly benefit or be detrimental to the distinctive character, or the reputation, of the Halloumi trademark.

PRV issued a decision on March 20 2019, noting that although the Foundation had submitted evidence that Halloumi cheese had been sold for a relatively long time and to an increasing extent, the evidence did not show that consumers identified Halloumi as a trademark from specific producers, but rather generally as a type of cheese from Cyprus. PRV made the conclusion that the trademark did not have a strong distinctive protection.

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PRV then compared the goods and concluded that Falloumi falafel is a ready-made food that has other distribution channels than the Halloumi cheese; that the goods are sold in different sections in grocery stores; and that they are not competing or complementary goods. PRV rejected the opposition.

The Foundation appealed to the Patent and Market Court (PMD), which rejected the appeal on April 16, 2020, after reaching the same arguments and conclusions as PRV. The Foundation appealed further to the Patent and Market Court of Appeal (PMÖD), that noted initially that there was a high degree of similarity between Falloumi and Halloumi.

PMÖD noted that both types of goods can be consumed directly, but cheese can also be included as an ingredient in falafel or eaten with falafel, making the two types of goods complement each other.

However, the court further concluded that the trademark ‘Halloumi’ did not, at the time of filing the application at the EUIPO, have the reputational level in the EU that a third party’s trademark could be said to take unfair advantage of, or be detrimental to, its distinctive character or the reputation (article 9 (2) (c) of the EU Trademark Regulation).

PMÖD also noted that Halloumi had at least recently been used as the name of a certain type of cheese, as an ingredient in a recipe or in combination with other words as a name for dishes.

Under such conditions, the word “Halloumi” must be considered to have low distinctiveness for cheese. The PMÖD rejected the appeal on December 16, 2021 (PMÖÄ 5507-20).

What to learn from this case?

One problem, identified by PRV, was that the Foundation had accepted that local Swedish food stores combined their own trademarks with Halloumi on their cheese packages. Halloumi had become a purely geographical indication rather than a trademark.

However, this may now be solved; the protection expanded on April 12, 2021 when the European Commission registered Χαλλούμι/Halloumi/Hellim as a PDO. The PDO, together with clear guidelines for re-packaging and third parties’ marketing, will likely increase the protection.