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European Court Prohibits Use of Dairy Names for Non-Dairy Products

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Report Highlights:

On June 14, 2017, the European Court of Justice (ECJ) ruled that plant-based products cannot be labeled with dairy names such as "milk" or "butter" even if the plant origin is clearly indicated on the label. The ECJ ruling gives a very strict interpretation of the EU's rules on the use of designations reserved for milk and milk products. It prohibits the use of reserved dairy names in association with plant-based products unless the names are explicitly included in an EU-list of authorized exceptions.

European Court of Justice Prohibits the Use of Reserved Dairy Names for Non-Dairy Products

On June 14, 2017, the European Court of Justice (ECJ) ruled that plant-based products cannot be labeled with dairy names such as “milk”, “cheese” or “butter” even if the plant origin is clearly marked on the label. The ECJ ruling gives a very strict interpretation of the EU’s rules on the use of designations reserved for milk and milk products in a case brought against a German company for marketing vegetarian and vegan products labeled with dairy names such as “tofu butter” and “veggie cheese”.

ECJ Ruling

In its [June 14 ruling](#), the ECJ concluded that for marketing and advertising purposes, in principle, the designations “milk”, “cream”, “butter”, “cheese” and “yogurt” are reserved under EU law for products of animal origin only. The ECJ ruling prohibits the use of dairy names in association with purely plant-based products unless the names are included in an EU list of exceptions. The ECJ also clarifies that this prohibition applies even when the plant origin of the product concerned is provided because the addition of descriptive and explanatory terms cannot completely rule out consumer confusion.

EU Rules on Reserved Dairy Names

The ECJ ruling is an interpretation of the EU’s [Single Common Market Organization \(CMO\) 1308/2013](#) which repealed Regulation 1234/2007. The Single CMO establishes marketing standards for milk and milk products and sets out definitions, designations or sales descriptions that may only be used for the marketing of dairy products (see Annex VII, Part III). By way of exception, the Single CMO allows the marketing of plant-based products under the reserved designations when the exact nature of the product is clear from traditional usage (e.g. coconut milk) and/or when the designations are clearly used to describe a characteristic quality of the product (e.g. (creamy)). The EU’s first [Single CMO Regulation 1234/2007](#), now repealed by Regulation 1308/2013, required Member States to notify to the European Commission an indicative list of non-dairy products meeting the aforementioned criteria.

List of Exceptions

Based on the indicative lists submitted by the Member States, [Commission Decision 2010/791](#) - in force since December 2010 - establishes a list of non-dairy products that may be labeled with reserved dairy names. The English-language terms allowed under Decision 2010/791 (Annex I) are:

- Coconut milk
- “Cream ...” or “Milk ...” used in the description of an alcoholic beverage (for example “cream sherry”)
- Cream soda
- Cream filled biscuits
- Cream filled sweets or chocolates
- Salad cream
- Creamed coconut and other similar fruit, nut and vegetable products
- Cream of tartar

- Cream or creamed soups
- Horseradish cream
- Ice-cream
- Jelly cream
- Table cream
- Cocoa butter
- Shea butter
- Nut butters (for example peanut butter)
- Butter beans
- Butter puffs
- Fruit cheese (for example lemon cheese)

Are Translations of Authorized Exceptions Allowed?

The list of exceptions is a collection of product names grouped per language (not product). Product names included in the list are not translated in all EU languages. The English-language term “almond milk” for example is not included in the list while the French, Spanish and Italian terms “lait d’amandes”, “leche de almendras” and “latte di mandorla” are. The ECJ does not accept translations of product names included in the list as falling within the scope of authorized exceptions. The European Commission confirmed that “Exceptions appearing on the list are allowed only in the languages in which those terms were notified by Member States. Translations into other languages are not permitted.”

Does the ECJ ruling affect U.S. Products?

The recent ECJ ruling is a very strict interpretation of the EU’s rules on reserved dairy names. Where a Belgian court ruled in 2015 that the translation of the French-language term ‘lait d’amandes’ included in the list of exceptions could be translated into Dutch, the ECJ ruling does not allow for such translations. The European Commission clarified that in the event of a dispute, it is ultimately for the ECJ to provide a definitive interpretation of the applicable EU law. The use of the English-language term “almond milk” is not allowed as it is not included in the list of exceptions. U.S. manufacturers of plant-based products are strongly advised to avoid the use of reserved dairy names to market and advertise their products in the EU unless the products will only be marketed/advertised in the markets and languages for which the name appears in the list of authorized exceptions (Annex I to [Commission Decision 2010/791](#)).