

Unravelling the story behind the Intellectual property of Halloumi Cheese; a 'State Affair' for Cyprus

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ABSTRACT

This article evaluates the intellectual property (IP) protection of Halloumi Cheese, as an authentic traditional product of Cyprus focusing particularly on trademarks (TM) and Geographical Indications of Origin (GIs). In examining the protection afforded under these two spheres, the challenges that the Halloumi cheese has undergone are analysed. The main purpose of this article is to untangle the confusion regarding the intellectual property (IP) of the cheese of Cyprus while establishing the current stage of IP protection of Halloumi and achieve a better suited 'intellectual property protective scheme' for the culinary product. The essentiality of this lies in its need to be valued and recognised properly for the benefit of Cyprus and Europe's heritage.

1. HALLOUMI CHEESE AND THE NEED FOR INTELLECTUAL PROPERTY PROTECTION

Halloumi cheese is one of the most reputational traditional delicacies reminiscent of Cyprus,¹ and is in fact characterised as the flagship of Cyprus's authentic cuisine. Due to the low volume of population and the size of the island, it is a significant benefactor in the advancement of economic development of the country.

It is produced from sheep or goat's milk or a mixture thereof, with or without cow's milk added. There are two types of *Halloumi*, namely fresh and mature (ripe).² *Halloumi* is white to light yellowish in colour and its taste and strong aroma is characterised by the addition of mint leaves. Its appearance is easily recognizable by its unique folded (into a rectangular or semi-circular) shape, as part of the traditional processing.³ *Halloumi* has been produced according to the same traditional method handed down

from one generation to the next for centuries, in the geographical territory of Cyprus, maintaining its traditional character. *Halloumi* is the only cheese with the extraordinary ability to be cooked in high temperatures due to its high melting point.⁴ Its special composition is a result of the combination of environmental factors and local producers who have the knowledge of its production process. The white cheese is produced by curdling milk with rennet, through a heating treatment of the curds in whey at a temperature of over 90° C. This unique feature of the production process gives it its special organoleptic quality of not melting.⁵

Halloumi cheese is also known by the Turkish Cypriot name 'Hellim.'

The cheese can be consumed in a range of food dishes, such as salads, not only raw, but also grilled, fried or in the oven. The European Union (EU), the United States (USA), Australia and the Arab world are the major markets of the Cypriot cheese.⁶

As reiterated, *Halloumi* cheese incarnates a vital factor for the enhancement of the country's economy and an inseparable piece of its agricultural heritage and promotion of culture. It is also of central importance for the reputation of high-quality products in the context of an authentic traditional heritage in the Mediterranean gastronomy and the Europeanisation of the country as an active Member State.⁷ However, IP protection for the traditional cheese of Cyprus is inadequate, mainly due to internal problems oscillating the island. As a result, the product has faced considerable challenges; it has been exposed in the realm of competitors who have endeavoured to make the most of its success, value and reputation.⁸ As it will be seen in the analysis below, several marketing companies and commercial franchise businesses operating in the UK, Sweden, Germany, Canada, Cyprus and other countries, have been marketing products, labelling them '*Halloumi* cheese' or a similar label, despite having different properties from the traditional cheese. In 2018, the Ministry of Energy, Commerce and Industry (hereinafter 'the Ministry of Commerce') of the Republic of Cyprus has announced that it is handling 79 on-going cases concerning the protection of the TMs for the *Halloumi* cheese, having already resolved 64 closed TM infringement cases regarding the local product.⁹ Making a parallel with the old but renowned English legal maxim, "*what is worth copying is prima facie worth protecting*,"¹⁰ there is a value worth protecting in relation to this cheese, given the 'copying' acts made over the years. The objective of this work is to examine the existing problems and challenges of IP protection that *Halloumi* has faced in order to determine the status quo of IP protection of the valuable agricultural product. In turn, its ultimate purpose is the proposal of

possible measures for overcoming the challenges and establishing a strong ‘protective IP scheme’.

For these purposes, the article contains two main sections. In the first part, the protection under TM law and the relevant challenges faced by the local product since its TM protection are addressed. The second part examines the protection afforded by the law of GIs to the *Halloumi* cheese and the challenges it has faced up until May 2019.

2. PROTECTION UNDER TRADEMARK LAW

2.1. Registered ‘Halloumi’ Trademarks

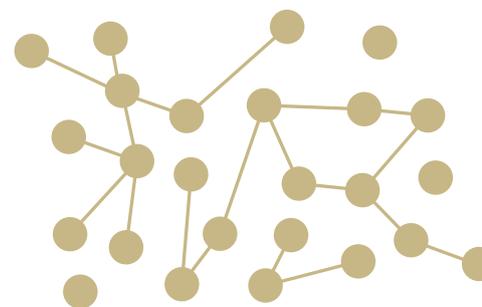
Initially, *Halloumi* Cheese sought to be protected under trademark law by the Ministry of Commerce and the Ministry of Agriculture on behalf of the Government of Cyprus. Hence, the name of the product sought to be protected first. This section addresses the very first efforts and the existing registered TMs.

First and foremost, it shall be acknowledged that without having an “official file” for the cases of *Halloumi*, it is almost impossible to give an accurate analysis of the efforts involved in protecting the IP rights of the local product. Nonetheless, the endeavours undertaken by the Republic of Cyprus were dispersed across the whole world and neither belonged to, nor constituted a part of a coordinated plan or ‘protection strategy’. Interestingly, the reasons for that were political rather than legal, albeit not the subject of a detailed analysis.¹¹

After a global research of the existence of *Halloumi* TMs, there are registered TMs for *Halloumi* cheese in nine countries or TM offices, including the European Intellectual Property Law Office (EUIPO). These are: USA, UK, Germany, Brazil, Jordan, Canada, France, Greece, Cyprus.¹² The TM owners are not only the Ministry of Commerce and the Ministry of Agriculture but also the ‘Foundation

for the Protection of Traditional Cheese of Cyprus named *Halloumi*’¹³ as an organisation aimed at coordinating any efforts of protection sought. Remarkably, this foundation has obliged some of the producers to become members.¹⁴ Figure 1 below presents a non-exhaustive list of these *Halloumi* TMs.

The very first gesture that denoted the desire to protect the brined cheese was initiated in the USA, at the end of the 1980s, when the Ministry of Commerce applied to register *Halloumi* as a certification mark under the US Patent and Trademark Office.¹⁵ Although it was granted in 1990, in 1991 the Danish Dairy Board challenged it with a cancellation petition based in that the term ‘*Halloumi*’ was of generic use. The Court dismissed the petition, establishing that the term ‘*Halloumi*’ was neither generic, nor descriptive of a type of cheese, but instead was a distinctive product which is indigenous to Cyprus. This has certified that the *Halloumi* cheese that was imported and marketed in the US and Canada could only be of Cyprus origin. This TM - which has been renewed and is still valid in 2019¹⁶ - is of the utmost importance because the US approach to the protection of traditional products is based merely on TMs to the detriment of GIs which are, contrarily, far more favoured at an EU level.¹⁷



¹ In Greek language: ‘Χαλλούμι’.

² Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 101.

³ Official Website of the ‘Ministry of Energy, Commerce and Industry of Cyprus’ www.mcit.gov.cy/mcit/trade/ts.nsf/All/B82C2CDCC26EACAF2257EB50024A-ED7?OpenDocument&fbclid=IwAR3G_aL5lwElKc0stAmBQCb0VHIHbdX0np4eqHAK-7c1LwoNuWbIDCdpbd5Q.

⁴ *Ibid.*

⁵ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an*

Assemblage: Multiplicity, Power and Transformation (Routledge 2018), 80.

⁶ Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 101.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Official Website of the ‘Ministry of Energy, Commerce and Industry of Cyprus’ www.mcit.gov.cy/mcit/trade/ts.nsf/All/7C6FB6D-55F33C473C225835A004A31BE?OpenDocument&highlight=%CF%87%CE%B1%-CE%BB%CE%BB%CE%BF%CF%85%-CE%BC%CE%B9.

¹⁰ *University of London Press Ltd v University*

Tutorial Press Ltd [1916] 2 Ch. 601.

¹¹ Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 102.

¹² www.tmdn.org/tmview/welcome#.

¹³ Hereinafter referred to as ‘The Halloumi Foundation’.

¹⁴ *Ibid.* no 16, p 102.

¹⁵ Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 102.

¹⁶ United States Patent and Trademark Office; Trademark Electronic Search System (TESS).

¹⁷ *Ibid.* no 30.

It is also notable that at the national level, the Cyprus Registry has allowed registration of several individual TM applications brought by separate entities producing the product, without posing any disclaimer ('exclusivity clause') regarding the use of the term 'Halloumi'. A disclaimer would circumscribe the use of this term only to the 'original' products. Without it, the term, *Halloumi*, was unrestrictedly used for all kinds of products and in all TMs, resulting in losing its aptitude as a TM. Some of these registrations consist of the term 'Halloumi' along with the company's name such as 'ΧΑΛΛΟΥΜΙ παραδοσιακό - αιγινό LANITIS' traditional goats *Halloumi*, owned by LANITIS BROS LTD.¹⁸ Arguably, such actions have as a direct consequence, the risk that 'Halloumi' will become descriptive of a type of cheese originating from Cyprus.

The national certification marks 'ΧΑΛΛΟΥΜΙ – HALLOUMI' TMs constituted the subject-matter of countless opposition and infringement proceedings against unauthorised competitors who used the TM, either as a single word mark or as a combined figurative mark including the whole or part of the word. Additionally, the UK TM and the EUTM were considered the most powerful tools for protecting *Halloumi* IP rights. Their existence was a favouring factor for the registration of *Halloumi* as a Pro-

tected Designation of Origin (PDO). Despite that, as we shall come back to, these have been challenged, which may result in their removal from the EUIPO's Registry.²⁷

2.2. Registered 'Hellim' Trademarks

While Cyprus holds TMs for the name '*Halloumi*', no Cypriot organization or Ministry has sought to acquire a TM for the respective name 'Hellim'. Indeed, the Turkish name 'Hellim' is protected under seven individual registrations in Turkey and one application for registration filed, while two TM applications containing the word 'Hellim' were filed in the US.²⁸ As a result, the Cyprus Milk Industry Organization raised an action to appeal against an EU court decision which allowed Garmo AG, a German based company, to market 'Hellim' products.²⁹ Since 2006, Garmo AG owns the community mark 'HELLIM', for milk and milk products, for one of its dairy brands called Gazi.³⁰

The 'Organismos Kypriakis Galaktokomikis Viomichanias'³¹ lodged a complaint with the EU's OHIM, based on article 8(1)(b) EUTMR on the ground of likelihood of confusion and its earlier registered EUTM *Halloumi*, resulting in a case in the CJEU.³² Upon the unsuccessful re-

HALLOUMI PROTECTED UNDER THESE TMs¹⁹

| TM owner | TM Office | Type of TM, Registration No | Trade Mark | Registration Date - expiration Date ²⁰ | Nice classification ²¹ |
|---|-----------------------------------|--|---|---|-----------------------------------|
| Ministry of Commerce | Cyprus' Registrar | Certification Marks No 36765 & No 36766 | 1. ΧΑΛΛΟΥΜΙ – 2. HALLOUMI' | 25 June 1992- 2027 | Class 29 ²² |
| Ministry of Commerce | Canadian IP office | Wordmark No 908008-00 | Halloumi | 21 May 1997 - unknown | Class 1-45 |
| Ministry of Commerce | Jordanian 'IP office directorate' | Combined Mark No JOT1102512 |  | 29 Sept. 2013 - 4 November 2022 | Class 29 |
| The Halloumi Foundation | German IP Office 'DPMA' | Figurative wordmark TM No 398232903 |  | 31 August 1998 – 30 April 2028 | Class 29,31, 33 ²³ |
| The Halloumi Foundation | EUIPO | Collective Community Word Mark (now: EUTM) ²⁴ | Halloumi | 14 July 2000 – 22 Feb. 2029 | Class 29 |
| Permanent Secretary, Ministry of Commerce | UK IP office | Certification Mark ²⁵ No: UK00001451888 | Halloumi | 22 February 2002 - unknown | Class 29 ²⁶ |

Figure no 1.

¹⁸ www.tmdn.org/tmview/welcome#. Apart from this company, LANITIS BROS LTD, CHARALAMBIDES CHRISTIS LTD, PITTAS FOODS LTD and others have similar TMs, registered in Cyprus Registry.

¹⁹ All these 'HALLOUMI' TMs have authorised users, namely those who are authorised by the Ministry and their products conform with the standards, as the lawful 'licensees' of the marks.

²⁰ Official websites of the EUIPO: www.tmview.com and <https://euipo.europa.eu/eSearch/#details/trademarks/001082965>.

²¹ Nice Agreement on the International classification of Goods and Services for the

Purposes of Registration of Marks of 15 June 1957.

²² Reg. no 36765 for the fresh halloumi and Reg. no 36766: mature halloumi cheese, specifically folded in the middle.

²³ Covering: "milk and milk products; cheese but also fresh fruits and vegetables and alcoholic beverages except beers".

²⁴ Since the CTM regulation was replaced by EUTMR, the EUTM is from now on used in this article.

²⁵ Hereinafter referred to as 'UK TM'.

²⁶ Covering: Cheese made from sheep's and/or goat's milk; cheese made from blends of cow's milk."

²⁷ Registration of National Certification Marks No 36765 & No 36766 <https://euipo.europa.eu/eSearch/#details/trademarks/001082965>.

²⁸ Official TM search tool of the EUIPO < www.tmdn.org/tmview/welcome .

²⁹ Britain wades in as Cyprus is threatened by a cheese war [2013] Independent. www.independent.co.uk/news/world/politics/britain-wades-in-as-cyprus-is-threatened-by-a-cheese-war-8603457.html .

³⁰ However, a quick search on the company's website indicates products sold not only as 'Hellim' but also as 'Halloumi.' Also, the label "Cyprus style cheese" is displayed in the package of some marketed products.

quest of annulment of the OHIM's decision, the General Court (GC) concluded in a degree of conceptual similarity between the Turkish term 'Hellim' and the Greek term 'Halloumi' for the average consumer in Cyprus, but it was insufficient to find a likelihood of confusion. Finally, since 2013, after an unsuccessful appeal of the Association to the CJEU the GARMO AG company is allowed to name its cheese product 'Hellim' when exporting it in the EU.³³ The same company has owned the TM 'GAZI Hellim' in Germany since 2006³⁴ and in the EUIPO since 2013.³⁵

As observed by Gizela Welz, this was a 're-invention' of the Cypriot cheese by a German entrepreneur.³⁶ The Courts emphasised that "[A] TM grants an economic actor the exclusive right to use a name for a product and to take action against any other producers" who use the same name under their product.³⁷ Nonetheless, TMs do not prohibit other manufacturers from producing the cheese; they even allow the use of the same recipe, provided that the final product is labelled in order not to be mistaken for an earlier-protected TM.³⁸ This rendered the German company's actions legal. Since no specific regulations such as a PDO label or a fair-trade certificate existed for the Cypriot cheese, to support the origin claims, GARMO AG could not be prevented from using the Turkish equivalent for *Halloumi*, nor from using the same recipe for its product. Hence, this decision clearly indicates that TM law does not impose any restriction to someone who wishes to exploit the cultural heritage of a country, for economic purposes. This incident signposts the insufficiency of the protection under TM law for agricultural products. A summary of the main challenges in TM law follows.

3. CHALLENGES UNDER TRADEMARK LAW

Despite the existing TM protection of *Halloumi* Cheese, there were barriers which toughened the protection of the IP rights of the product. Firstly, any attempt by the Government to preserve the word *Halloumi* was sabotaged by the Cattle Farmers' association and other entities who have endeavoured to register countless EUTMs containing a slightly different version of the word *Halloumi*, or its combination with other words and a shape, forming a figurative or a combined TM. While some of the applica-

tions were rejected by the EUIPO, other applications have been judged as not infringing the earlier *Halloumi* TMs and they were accepted and registered.

The second main challenge is the loss of the UK *Halloumi* TM, after Cyprus failed to respond in time to the revocation application of the British Company John & Pascalis Ltd. This has rendered the future of the 2014 PDO application unambiguous, as well as the protection of *Halloumi* under TM law.

3.1. Infringements of existing Halloumi TMs Halloumis's 23 refused EU wordmark applications

Firstly, the cattle farmers have created their own company named 'Halloumis POC Farmers Milk Industry Ltd' or *Halloumis* (POCF), incorporating 157 members, which corresponds to approximately 75% of the total number of Cypriot producers of cow milk. It is the biggest cow milk producer used in producing *Halloumi*.³⁹

The motive behind their reaction was the decision of the Cyprus Government to designate that *Halloumi* should contain at least 51% sheep and goat milk and less than 49% of bovine milk.⁴⁰ Since a large percentage of the cheese manufacturers have been producing *Halloumi* with more than 90% bovine milk, the new regulation would render this action illegal and their cheese 'non-traditional.'



³¹ This association represents the interests of the Greek Cypriot dairy companies.

³² Case T-534/10, *Organismos Kypriakis Galaktokomikis Viomichanias v OHIM GARMO (HELLIM)* [2012], EU:T:2012:292.

³³ Case C-393/12 P-*Foundation for the protection of the traditional cheese named Halloumi v OHIM* [2013] EU:C:2013:207.

³⁴ [www.tmdn.org/tmview/welcome#Application no 305713388](http://www.tmdn.org/tmview/welcome#Application%20no%20305713388).

³⁵ *Ibid*, Application no 004764619.

³⁶ Gisela Welz, *European Products: Making and Unmaking Heritage in Cyprus* (first published 2015, Berghahn Books, 2017), Chapter 5:

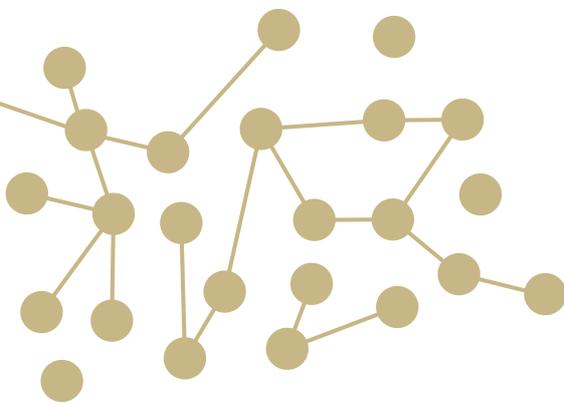
"Origin Food' The struggle over HALLOUMI', 95.

³⁷ *Ibid*.

³⁸ *Ibid*.

³⁹ Case T-584/15 *Pagkyprios Organismos Ageladotrofon Dimosia Ltd (POA) v European Commission* [2017] ECLI:EU:T:2016:510, para 10.

⁴⁰ Official Standards CYS 94-1 (fresh Halloumi) and CYS 94-2 (mature Halloumi). www.cys.org.cy/index.php/el/anzitisi-protypon. Hereinafter referred to as: '1985 Standard'.



In June 2012, this company, or its wholly owned subsidiary named Papouis Dairies Ltd, filed 23 EUTM applications reminiscent of the earlier national and European *Halloumi* TMs disclosed above. As opined by Mr Pittas, a well-known Cypriot cheese maker, this is a ‘dirty trick’, ‘It’s like having ‘Champagne’ and ‘Champagnes.’⁴¹ The TMs applied for were composed of the word ‘HALLOUMIS’ and a second and sometimes a third word, related to the word ‘CHEESE’, at the end. Some examples of the TMs are the following: *HALLOUMIS LOW FAT CHEESE*, *HALLOUMIS LIGHT CHEESE*, *HALLOUMIS VILLAGE CHEESE*, *HALLOUMIS BIO CHEESE*, *HALLOUMI BURGER CHEESE*. The 23 applications were sought for ‘cheese; rennet’ under class 29 of Nice Classification.⁴²

All the applications have been refused by the OHIM by way of the same reasoning, based on Articles 7(1)(b), (c) and 7(2) CTMR.⁴³ The signs were considered to be descriptive and devoid of any distinctive character.⁴⁴ To explain, the refusal of registration of ‘*HALLOUMIS BIO CHEESE*’ is examined. Firstly, the Office demonstrated that the word *Halloumi* means mild, firm white Cypriot cheese made from goat’s or ewe’s milk, used especially in cooked dishes. In finding descriptiveness, it submitted that the ‘*HALLOUMIS BIO CHEESE*’ will be perceived by

the relevant consumer as a meaningful expression, that is, a mild, firm, white Cypriot cheese which is biological, and deriving from environmentally sustainable sources. Hence, the expression *HALLOUMIS BIO CHEESE* and the goods referred to in the application were found to be sufficiently close by the relevant public. In relation to the goods, it was held that the expression was clearly describing the goods applied for; ‘Biological *Halloumi* cheese’, namely deriving from environmentally sustainable sources. Accordingly, it was devoid of any distinctive character. This reflects obvious and direct information on the kind and quality of the goods in question.

Despite the submission of the applicant that *HALLOUMIS* is the name of the founder of the company, Mr Xenis *Halloumis*, and hence it cannot be considered as a descriptive term, the Office submitted that the final “S” does not detract from the meaning of the word, being ‘*Halloumi*’ as defined by the Office and reflected in the Oxford English Dictionary.⁴⁵

PAPOUIS DAIRIES AND POCF APPLYING FOR EU FIGURATIVE MARKS

The actions of Papouis Dairies to acquire 23 EUTMs, describing the product of *Halloumi*, failed. Nevertheless, during September and October 2012, the same company and its mother company applied for the registration of figurative marks within the EUIPO for goods of class 29 of the Nice Classification (see figure no 3). The TM applications have been opposed by *Halloumi* Foundation and the Republic of Cyprus, based on the grounds of likelihood of confusion and the reputation of the earlier mark under article 8(1)(b) and 8(5) of Regulation No. 207/2009. The earlier TMs relied on for the oppositions were the *HALLOUMI UK Certification TM No. 1451888* and *EU Collective Mark No. 1082965*.⁴⁶

The oppositions were dismissed by the Opposition Division finding no breach of A articles 8(1) (b) and 8(5). The opponents appealed against the decisions which were

| OPPOSITIONS TO THE APPLICATIONS FOR FIGURATIVE MARKS FILED IN THE EUIPO ⁴⁷ | | | |
|---|---|--|---|
|  |  |  |  |
| Case T-847/16 ⁴⁸ | Case T-825/16 ⁴⁹ | Cases T-702/17, T-703/17 ⁵⁰ | Cases T-416/17, T- 417/17 ⁵¹ |

Figure no 2.

rejected by the Fourth Board of Appeal. Lastly, the opposing party brought actions to annul the BOA's decision.

Regarding the 'Cowboys Halloumi' and 'Pallas Halloumi' marks, the GC concluded that there was no likelihood of confusion. Following the reasoning of the GC in 'Gazi Hellim', 'in the eyes of the Cypriot public the word designated a particular type of cheese produced in Cyprus.' The same was concluded for the UK public which would perceive *Halloumi* word as describing the characteristics and composition of the product or even the origin of the goods⁵² and not as a reference to any certification or certified quality.⁵³ Despite the goods being identical and the similarity of the conflicting signs due to the common presence of 'Halloumi' word, the weak distinctive character and the descriptive meaning of *Halloumi* mark concluded in no likelihood of confusion.⁵⁴ Regarding the PAP 'Papouis Halloumi' and 'Fino Cyprus Halloumi cheese' cases, the GC annulled the contested decisions, finding a low degree of phonetic, visual and conceptual similarity between the two marks and the *Halloumi* TM. Yet these marks are still pending in the EUIPO.

HALLOUMAKIS & HALLOUMITSA TM; REGISTERED TMS

On 16 October 2012, POCF decided to apply for the registration of the figurative EUTMs HALLOUMAKIS and HALLOUMITSA as appearing in figure no 4 for the class of good 29 and 30 of the Nice Classification. The applications were unsuccessfully opposed by the *Halloumi* Foundation and the Permanent Secretary of the Ministry of Energy, Commerce, Industry and Tourism based on the same grounds as above. Similarly, they were unsuccessfully appealed, with the Court concluding as below: "There is a lack of visual, aural or conceptual similarity between the contested marks and the earlier *Halloumi* Marks as the word HALLOUMITSA is unlikely to be pronounced and the public will perceive the contested mark as mere cartoon character and not as a female cheese"⁵⁵ ⁵⁶. Hence,

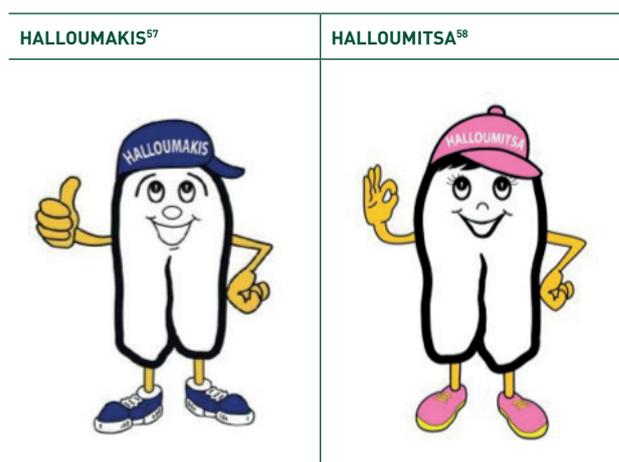


Figure no 3.

since no similarity or identity between the marks exist, article 8(5) is unnecessary to be examined.

More importantly, the Court emphasised that '*Halloumi*' is descriptive as a generic term for a specific type of Cypriot cheese and that the earlier mark and the common elements 'Halloum' of the applied marks have low distinctiveness. These marks are registered in 2017 and 2016 respectively, and they are valid until 2022.

In 2014, the Republic of Cyprus and the *Halloumi* Foundation decided to file an action before the GC against the Bulgarian Company M.J. Dairies EOOD which sought to register BBQLOUMI TM for class of goods 29, 30 and 43, relying on the same plea of law, namely an infringement of article 8(1)(b) EUTMR.⁵⁹

Firstly, the GC emphasised that all the marks (the contested mark and the two earlier marks '*HALLOUMI*') aimed at the average consumer who is reasonably informed, observant and circumspect.⁶⁰ The relevant public of the earlier TMs understood the word '*Halloumi*' as a description of the characteristics of the origin of the goods and

⁴¹ Gabriele Steinhauser, 'In Cyprus, New Cheese edict gets the Goat of Dairy Farmers – As world Hungers for Halloumi, Officials want less Cow's Milk in Mix; Curdled History' (2012) Wall Street Journal, 3.

⁴² Nice Agreement on the International classification of Goods and Services for the Purposes of Registration of Marks of 15 June 1957.

⁴³ It has been replaced by the EUTMR (see above, page 15).

⁴⁴ Sandra Kasperiuaitė, 'Office for Harmonization in the Internal Market: Operations Department' (Alicante, 31/10/2012).

⁴⁵ <https://en.oxforddictionaries.com/definition/halloumi>.

⁴⁶ These TMs are identical. For this reason, they are assessed together.

⁴⁷ eSearch plus: EUIPO Database <https://euipo.europa.eu/eSearch/#basic>.

⁴⁸ Case T-847/16, Republic of Cyprus v EUIPO (Cowboys Halloumi case) [2018], EU:T:2018:481.

⁴⁹ Case T-825/16, Republic of Cyprus v EUIPO (Pallas Halloumi case) [2018], EU:T:2018:482.

⁵⁰ Case T-702/17, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO-Papouis Dairies (Papouis Halloumi) [2018], EU:T:2018:832 and Case T-703/17, Republic of Cyprus v EUIPO Papouis Dairies (Papouis Halloumi) [2018], EU:T:2018:835.

⁵¹ Case T-416/17, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO- Papouis Dairies (fino) [2018], EU:T:2018:834 and Case T-417/17, Republic of Cyprus v EUIPO – Papouis Dairies (Fino Cyprus Halloumi Cheese) [2018], EU:T:2018:833.

⁵² It does not refer to whether the user of the earlier mark belongs to a group of licensees authorised to use the mark.

⁵³ Nina Goodyear, 'HALLOUMI cases fail in the Board of Appeal' (2018) <https://united-kingdom.taylorwessing.com/en/insights/brands-update/halloumi-cases-fail-in-the->

board-of-appeal .

⁵⁴ *Ibid.* no 54, para 83.

⁵⁵ Case R 2652/2014-4 Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v Halloumis (9 November 2015) The Fourth BOA.

⁵⁶ Case R 2628/2014-4 Permanent Secretary, Ministry of Commerce, Industry and Tourism v Halloumis (2 November 2015) The fourth BOA.

⁵⁷ TM No 011209384.

⁵⁸ TM No 011269461.

⁵⁹ Case T-384/17, Republic of Cyprus v EUIPO – M. J. Dairies (BBQLOUMI) [2018], EU:T:2018:593, para 18 and Case T-328/17, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO- M. J. Dairies (BBQLOUMI) [2018], EU:T:2018:594.

⁶⁰ Case T-384/17, [para 28].

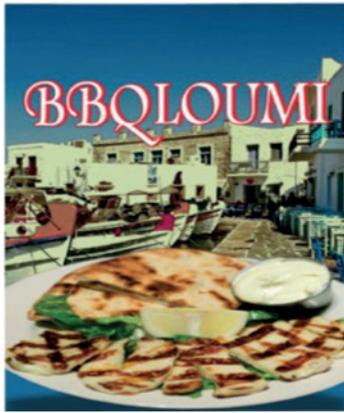


Figure no 4.

BULGARIAN EUTM APPLICATION: 'BBQLOUMI' MARK

| | |
|--|---|
| EU figurative mark: BBQLOUMI. TM No 013069034 Applied on : 9 July 2014 | Earlier UK TM & EU mark : UK Certification mark No. 1451888 EU collective HALLOUMI TM |
|--|---|

not as an indication of its certified quality. Thusly, the term concluded to have a low degree of inherent distinctive character with no enhanced distinctive character proven. It was reiterated that the article 83 EUTMR defining the certification mark was not satisfied; no link was established between the word *Halloumi* and any certification mark, or even to a certified cheese.⁶¹ Nor was a link found between the term '*Halloumi*' and its Collective TM (now EUTM).⁶² Indeed, the applicants' submitted evidence could only establish the use of the term '*Halloumi*' as a 'generic name' of a speciality cheese from Cyprus.⁶³

SWEDISH EUTM APPLICATIONS: GRILLOUMI MARKS

Since 2009, the Swedish Company Fontana Food AB has owned a EUTM 'GRILLOUMI' for the goods of class 29 and 30.⁶⁴ On 25 October 2016 it applied for registration of the same trademark for goods of class 43 and also for the EUTM GRILLOUMI BURGER used for goods of class 29, 30 and 43.⁶⁵ These applications were unsuccessfully opposed by Cyprus' *Halloumi* Foundation and the Permanent Secretary relying on their earlier TMs, under the same grounds as above. Indeed, the GC came to the same conclusion of the BBQLOUMI cases, merely that *Halloumi* was neither reputed as a collective nor as a certification marks, but rather as a generic name, incapable of distinguishing the goods of one undertaking from those of another.⁶⁶

Remarkably, it is adduced that the registration of GRILLOUMI and BBQLOUMI marks by foreign companies (M.J Dairies EOOD and Fontana) indicates the practice of allowing the use of a slightly different version of *Halloumi* name in derivative products such as cheese dips, processed cheese, crackers flavored with cheese and others.

3.2. The invalidation of the UK mark; the biggest challenge

The second incident that to a large extent weakened the TM position of the product was the loss of the UK Certification mark '*HALLOUMI*' due to the failure of the Ministry of Commerce to respond timely to cancellation applications, made by the British company John & Pascalis Ltd. Since 22 February 2002, the UK TM no. 1451888 has been long considered as one of the two most robust 'cards' of the Republic of Cyprus in the game of protection of the traditional cheese. This is partly because the UK is the biggest market for the popular *Halloumi* cheese.

More specifically, on 22 December 2017, John & Pascalis Ltd filed three separate actions to invalidate or revoke the UK TM of Cyprus.⁶⁷ The Ministry of Commerce acknowledged that by a letter on 26 January 2018, but no response of counter statement was filed before the two months' deadline. In April, a second letter was sent but upon the failure of the Ministry to oppose the invalidation application and to provide a written statement, counter-statement or to request a hearing on or before 19 April, the Court reached its decision to cancel the UK TM on the 2nd of May 2018. The April letter was only received to the correct authority on 9 May 2018. Following an unsuccessful request of a time extension for filing the required documents and an appeal against the Cancellation Decision, on 28 November 2018, the High Court rejected it and decided the cancellation of Cyprus' registration of the UK TM. In the Court's words, 'evidence simply demonstrates that the Ministry was the author of its own misfortune.' 'The Ministry's internal procedures were so disorganised that the letter enclosing the application was passed from official to official after receipt on 9 February 2018, but no action was taken.'⁶⁸ In 2011, the Ministry changed its address for service of documents from UK solicitors, Clifford Chance LLP, to the Ministry's offices in Nicosia, without providing the IPO with an email address for correspondence.⁶⁹

THE AFTERMATH

On 19 December 2018, the Ministry filed an appeal to reverse the High Court's ruling of 28th November, albeit unsuccessfully. Hence, the Ministry has reapplied to register *Halloumi* as a certification mark with the UK IPO. Despite warnings that this effort was the last chance of the Government to regain the UK TM, this is doubtful, since the High Court awarded a commercial licence to John & Paschalis Ltd to use *Halloumi* as a TM in the UK as well as third countries⁷⁰ where it is doing business.⁷¹

Despite that, the competent authorities did not seem particularly worried as long as the EUTM *Halloumi* remains in force across the EU, including the UK, being sufficient to fight against any non-Cypriot and unregistered firm producing *Halloumi* "without conforming to the prototype".⁷² Accordingly, under the EU collective TM, *Halloumi* is produced only in Cyprus with the specified standards, with the producers being registered in Cyprus' Registry.⁷³

With respect to the complications Brexit⁷⁴ may bring,

the Ministry reassured that based on the clause 54(1)(a) of the Withdrawal Agreement between the UK and the EU,⁷⁵ the EUTM *Halloumi* will automatically become a registered and enforceable TM in the UK, with the same effects as in present. This is rather unambiguous because according to recent reports, John & Pascalis is also trying to annul the EUTM and cancel the national HALLOUMI- XAAAOYMI TMs of Cyprus.⁷⁶ It is submitted that this will render *Halloumi* product unprotected by usurpations and TM violations. The act of the British company's director appealed against the PDO application (it is still subject to EC's decision) was 'the cherry on top' of *Halloumi's* endangered position. According to the company, this was the result of the ministries unwillingness to meet and negotiate the company's claims.

MOTIVE BEHIND THE BRITISH COMPANY'S ACTIONS AND RESULT

John and Pascalis Ltd alleges that its actions aimed to enhance the Cyprus' export market rather than to restrict it. It particularly claims that the 2014 PDO application contains specifications it had deemed appropriate, without any requirement by the European Regulations for such a specification.⁷⁷ As the company submits, there are patented products that contain all three types of milk, with no reference to milk percentages, something which benefits both the exporting activities of Cyprus and the consumers with plenty of choices. Further, it stated that "slandorous references" by the former Minister of Agriculture, about "monkey *Halloumi*", have brought financial problems to the company in tandem with a negative impact on its customers who believed that the imported *Halloumi* is not the 'real' one.⁷⁸ The pursuit of litigation was for them the way to restore the truth and avoid the risk of being sued by major UK supermarkets.

The British company expressed its willingness to withdraw its petition if the Republic of Cyprus agreed to accept a wider range of *Halloumi* specifications such as the traditional method that does not need the milk to be heated to 65 degrees, non-pasteurized milk, different percentages of milk and different shapes and production methods.⁷⁹ With the current PDO application, some of their products which are out of the specifications such as Chilli *Halloumi* cheese or Cheese blocks weighing over 300 gr are prohibited and precluded from the *Halloumi* label. These products have been imported to the UK for years and the intention is to continue being imported by having them included in the PDO application.

In its files submitted to the UK, European and Cypriot Courts, John & Pascalis argued that the actions of the Cypriot authorities indicate a lack of control of the TM *Halloumi* so that after a certain period, *Halloumi*, acquired a generic designation.⁸⁰ On the one hand, the Ministry of Agriculture filed the PDO application with strict specifications as to what is *Halloumi* and its ingredients, shape and weight, and on the other hand, it has approved products such as *Halloumi* with crushed pepper, chilli or basil, *Halloumi* Round, *Halloumi* Light and *Halloumi* in burger shapes to be sold and exported under the *Halloumi* TM. Figure no 5 contains some examples from the products' catalogue of Papouis Dairies Ltd, proving the contradiction on the Ministry's actions.

The cases analysed above are only a sample of TM registrations that were refused and there are others that are used by national, EU and international companies. It is submitted that the main reason behind these actions is the desire of each and every company to have its own economic interests secured, due to the high exporting demand and reputation of *Halloumi* cheese as a speciality product.

⁶¹ Case T-384/17 [para 44].

⁶² Case T- 328/17, [para 52].

⁶³ Case T-328/17 [para 50], Case T-384/17 [para 72].

⁶⁴ TM No. 007598221. <https://euipo.europa.eu/eSearch/#details/trademarks/007598221>.

⁶⁵ Decision on Opposition No. B 2 841 222 Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v Fontana Food AB [16/5/2018] & Decision on Opposition No B 2 841 297 Permanent Secretary, Ministry of Energy, Commerce, Industry and Tourism v Fontana AB [10/05/2018].

⁶⁶ Decision on Opposition No B 2 841 206 Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v Fontana Food AB [15/05/2018], page 11.

⁶⁷ George Psyllides, 'A series of blunders that lost us the halloumi trademark' [6 December 2018]. <https://cyprus-mail.com/2018/12/06/a-series-of-blunders-that-lost-us-the-halloumi-trademark/>.

⁶⁸ Permanent Secretary, Ministry of Energy, Commerce and Tourism, Republic of Cyprus

v John & Pascalis Limited [2018] EWHC 3226 (Ch), para 46.

⁶⁹ Ibid. para 32.

⁷⁰ 'Minister speaks out on halloumi case' [12 December 2018] <https://knews.kathimerini.com.cy/en/news/minister-speaks-out-on-halloumi-case>.

⁷¹ There is not yet an officially reported registration of the TM HALLOUMI mark by the British Company.

⁷² Anonymous, 'ECONOMY: Cyprus loses halloumi trademark in the UK' [6 December 2018]. www.financialmirror.com/news-details.php?nid=36246.

⁷³ George Psyllides, 'Probe launched into how ministry lost halloumi trademark [Updated]' <https://cyprus-mail.com/2018/12/05/probe-launched-into-how-ministry-lost-halloumi-trademark/>.

⁷⁴ Brexit: the combination of words: 'Britain' and 'exit.' The outcome of a referendum held in the United Kingdom, deciding the withdrawal of the United Kingdom from the European Union. The decision was communicated to the EU on 29 March 2017.

⁷⁵ 'Draft Agreement on the withdrawal of the

United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 19 October 2019'.

⁷⁶ 'CYPRUS: Lost Halloumi UK trademark still up for grabs' [15 December 2018] www.financialmirror.com/news-details.php?nid=36283.

⁷⁷ Elias Hazou, 'Government 'clueless' about halloumi business, says UK company' [11 December 2018] <https://cyprus-mail.com/2018/12/11/government-clueless-about-halloumi-business-says-uk-company/>.

⁷⁸ 'CYPRUS: Lost Halloumi UK trademark still up for grabs' [15 December 2018] www.financialmirror.com/news-details.php?nid=36283.

⁷⁹ 'Minister speaks out on halloumi case' [12 December 2018] <https://knews.kathimerini.com.cy/en/news/minister-speaks-out-on-halloumi-case>.

⁸⁰ Ibid no 84.



Figure no 5.

Despite the outcome of these cases regarding the likelihood of confusion, the result of all these TM cases of companies using or trying to use the already registered *Halloumi* TMs is the same: the word '*Halloumi*' ended up being recognised and used by a significant part of the relevant public, that is - consumers of the product - as a generic name of a cheese produced in Cyprus. Under article 58(1)(b) of EUTMR, a TM shall be revoked if it has become the common name in the trade (generic). Besides that, such a practice fulfils the absolute grounds of refusal of articles 7(1) (b) and (d) EUTMR the TMs' future unsecure. This is the case as it has repeatedly been held by the Court rulings above. This raises considerable doubts as to whether TM is the appropriate IP right for protecting the Cypriot cheese or at least ambiguity as to its sufficiency in protecting the product.

4. PROTECTION UNDER GEOGRAPHICAL INDICATIONS OF ORIGIN

The Ministry of Agriculture, Rural Development and Environment of the Republic of Cyprus has been in ongoing and contested endeavours to attain a geo-label for *Halloumi* cheese under the Law of GIs.⁸¹ It has been observed that the protection of the traditional product under TM law is extremely fragmented and weak due to the countless infringements by private companies and organisations. This resulted in the name of the cheese being a descriptive term of a cheese originating from Cyprus. Hence, the focus of the Cyprus Government and the interested parties shifted from TM to Protected Designation of Origin (PDO). Article 5(1) of the Regulation No 1151/12 (Quality Schemes Regulation),⁸² a (PDO is defined as the name of a region, a specific place, or in exceptional situations, a country used to describe a foodstuff or agricultural product. A product shall meet the following conditions to be PDO-labelled: (1) The product must come from a defined area, (2) the area must determine peculiar characteristics and distinctive qualities of the product and (3) all the operations, to wit, production, processing and preparation must be performed in that area.⁸³ The 'product specification' or code of practice (COP) is the most important part of the application, as it defines the standards that the producers must meet, in order to use the PDO indication. Only the producer who respects the COP shall use the protected name.⁸⁴

Under article 6(1), generic terms shall not be registered as PDO or Protected Geographical Indication (PGI) - viz, a common name denoting a type of a product or a foodstuff, even though it relates to the place or the region where it is originally produced or marketed. However, evidence shows the Court is very lenient when considering whether a name is generic. The cases of "*Feta*", "*Parmesan*" and "*Bavaria*"⁸⁵ are used as examples, where the CJEU ruled that these names shall not be excluded from protection on the basis that they are generic, if it is proved that the name is still able to evoke the place of production.⁸⁶ This is a positive factor for the case of *Halloumi* Cheese being PDO-labelled.

4.1. First effort of protecting Halloumi Cheese as a PDO

In 2009, the Cypriot Government submitted its first application to the EC, in its attempt to secure a PDO status for the origin-product *Halloumi*.⁸⁷ This application had many delays and obstacles in its way to filing in the EC. For example, by 2011 not even the publication of the product specifications in the Official Journal of the EU had been completed, which was the very first step of the process. In the end, the Cyprus Cheese Maker's Association (CCMA) withdrew the application in 2012.⁸⁸ The main reasons for the failure of the application to reach an EU level are mostly internal. The most important obstacles are analysed in the following sections.

4.1.1. Challenges of the 2009 PDO application First obstacle; the name of the protected PDO label

On 11 May 2004, the Cyprus' Dairy Producers' Association applied to register *Halloumi* cheese as a PDO, claiming that *Halloumi* is uniquely and exclusively Greek Cypriot.⁸⁹ In February 2007, the application was published in the Cyprus' Official Gazette. Given their right of opposition, in March 2007, the Cyprus Turkish Chamber of Industry (CTCI) and the Turkish Co-Operative Dairy Factory known as 'KOOPSÜT ORTAKÖY', located in the Turkish-controlled northern Cyprus brought a joined opposition asking for 'Hellim' to be added in the application for the PDO of *Halloumi*, since the same product is also produced by the Turkish Cypriot under the name 'Hellim'. The Ministry rejected the opposition and published the PDO publication decision. Upon an unsuccessful action and

appeal, Cyprus' Supreme Court rejected the appeal, reiterating the decision of publishing the PDO application.⁹⁰

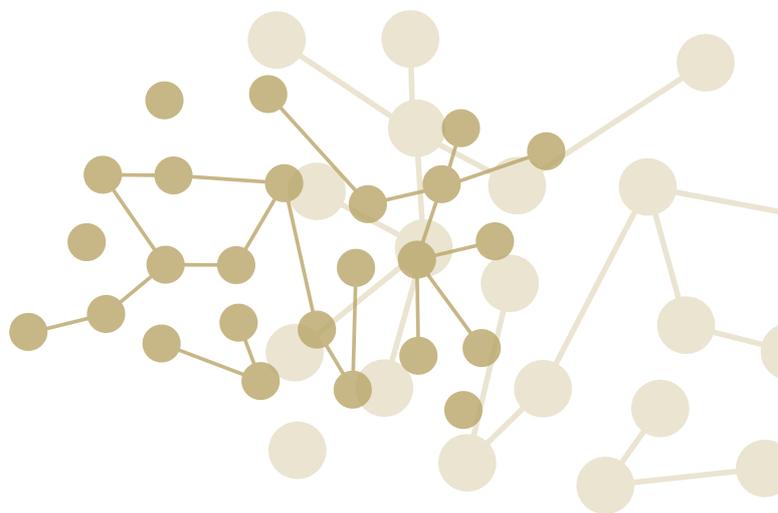
Although it seemed that the first barrier was surpassed, the reality revealed the opposite. This raised concerns also to the EU Commission, with Members of the European Parliament launching official enquiries at the EC, implying that the approval of the designation of *Halloumi* as an exclusively Greek Cypriot product would “contradict the European spirit of integration and inclusiveness that the PDO/PGI programme should be infused with.”⁹¹ However, the failure of this application to proceed was less due to the conflicts over ethnicized cultural property, and more due to internal conflicts concerning the product specification of the application.⁹²

The real problem; the composition of the Cheese

Halloumi is the most important agricultural export product for Cyprus. Therefore, it is of paramount significance for the Greek Cypriot dairy sector. Due to the high demand, the applicants were using cow milk in the product's manufacturing because of its high availability, its cheaper price compared to sheep or goat milk and its high availability.⁹³ This practice is permitted by the National legislation 195/85 and CYS 94 which sets out the standards of the milk percentage in *Halloumi*; it specifies that ‘a substantial amount of goat's and/or sheep's milk’ must be included in *Halloumi* cheese, but allows for up to half of the milk to be of bovine origin.⁹⁴ However, old submissions refer to the traditional *Halloumi* being produced by a mixture of sheep and goat milk, or from goat's milk exclusively. This is supported by the majority of Cypriot family-run producers who submit that there were few cows on the island, until high-yielded dairy cows have been introduced on a large scale by the British in the 1960s; when the British Rule was about to end in Cyprus.⁹⁵

It is argued that the liberal interpretation of the composition of *Halloumi* cheese is linked to its increasingly high export value and it was for the benefit of the economy to privilege the industrial product with the admixture of cow's milk, over the artisanal product. Statistics indicate the immense increase of the export revenue of the industrial cheese-makers from €60 million in 2012 to €100 million in 2018.⁹⁶

Hence, the dairy producers applied considerable pressure on the government bodies to ensure that the PDO application would include cow milk, having thus their cheese valorised and covered by the sought-after quality label.⁹⁷ Accordingly, the product specification of the application to the EC specified that the cheese would need to be made from at least 51% sheep and/or goat milk or otherwise from up to 49% cow milk in order to carry out the label *Halloumi*. The commentator Gisela Welz characterises this derogation from tradition, which is in line with the established legislation, an ‘adulterated’ tradition.⁹⁸



⁸¹ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation* (Routledge 2018), 80.

⁸² Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs (2012).

⁸³ Matteo Gragnani, ‘The EU Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs’ [2013] 8 Eur. Food and Feed L. Rev., 378.

⁸⁴ Emilie Vandecandelaere, ‘Linking People, Places and Products’ [2nd edition, Food and Agriculture Organization of the United Nations (FAO) and SINER-GI 2010], 151.

⁸⁵ Joined cases C-465/2002 and C-466/2002 Germany and Denmark v Commission (Feta) [2005] ECR I-9115; Case C-132/2005 Commission v Germany (Parmesan) [2008] ECR I-957; Case C-343/2007 Bavaria N.V. and Bavaria Italia Srl v Bayerischer Brauerbund (Bavaria), CJEU [2009] ECR I-5491.

⁸⁶ G. E. Evans, ‘The Strategic exploitation of Geographical Indications and Community Trade Marks for the Marketing of

Agricultural Products in the European Union’ in Peter K. Yu (eds), *The WIPO Journal: Analysis of Intellectual Property Issues* (W.I.P.O.J and Thomson Reuters Ltd 2010, 1[2]), 169.

⁸⁷ Gisela Welz, *European Products: Making and Unmaking Heritage in Cyprus* (first published 2015, Berghahn Books, 2017), Chapter 5: ‘Origin Food’ The struggle over HALLOUMI’, 104.

⁸⁸ Ibid.

⁸⁹ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation* (Routledge 2018), 80.

⁹⁰ Case no 564/2008 (Supreme Court Decision) 1. Turkish Co-operative Dairy Factory KOOPSÜT ORTAKÖY 2. Turkish Cypriot Chamber of Industry v 1. the Republic of Cyprus, Ministry of Agriculture through the Legal Service of the Republic, 2. The Attorney General of the Republic of Cyprus as a Representative of the Republic of Cyprus [11 Sep. 2008].

⁹¹ Gisela Welz, *European Products: Making and*

Unmaking Heritage in Cyprus (first published 2015, Berghahn Books, 2017), Chapter 5: ‘Origin Food’ The struggle over HALLOUMI, 104.

⁹² Ibid.

⁹³ Gabriele Steinhauser, ‘In Cyprus, New Cheese edict gets the Goat of Dairy Farmers – As world Hungers for Halloumi, Officials want less Cow's Milk in Mix; Curdled History’ [2012] Wall Street Journal, 2.

⁹⁴ Standards CYS 94-1 (fresh Halloumi) and CYS 94-2 (mature Halloumi) www.cys.org.cy/index.php/el/anazitisi-protypon.

⁹⁵ Gabriele Steinhauser, ‘In Cyprus, New Cheese edict gets the Goat of Dairy Farmers – As world Hungers for Halloumi, Officials want less Cow's Milk in Mix; Curdled History’ [2012] Wall Street Journal, 2.

⁹⁶ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation* (Routledge 2018), 82.

⁹⁷ Ibid, 82.

⁹⁸ Ibid, 82.

4.1.2. Deadlock of the 2009 PDO application

Despite the countless efforts of the Ministry to gratify the desires of all stakeholders of *Halloumi* cheese, a ‘civil war’ was initiated in Cyprus, according to the cheese maker Yiannos Pittas.⁹⁹ The battle was between the traditional cheese makers, consisting of small family-run businesses (farmers, shepherds) and industrial cheese producers (cattle farmers) who are part of the Dairy Products’ Association (CCMA).

In 2010, owners of large flocks of goats and sheep protested in the capital, demanding that goat and sheep milk should continue to be a prominent ingredient in the future production of the EU certified cheese.¹⁰⁰ As a matter of fact, the majority of cattle farmers and large *Halloumi* producers were making the cheese with more than 90% of cow milk.¹⁰¹ This practice obviously breaches the ‘1985 standard’. Mr. Aletraris, the Agriculture Minister, calls cow-milk-heavy *Halloumi* “plastic cheese”.¹⁰² On the other side of the fence, in 2012, the CCMA were protesting that the volume of sheep and goat milk available was far too small to support their export activities and thus were unable to meet the standard or even the domestic regulations.¹⁰³ Deputies and members of the Cyprus parliament received serious threats from the cattle farmers who were furious by the law being passed, as it would cost them millions (due to the tonnes of unused cow milk).

The PDO application submitted by the Ministry of Agriculture was not restricted to the traditional product made of sheep and goat milk, but also included an important percentage of cow milk, in an endeavour to satisfy the big manufacturers’ interests to secure the entire output of industrially produced *Halloumi* as a PDO. Nevertheless, the powerful dairy corporations which were the applicants, were still unhappy.¹⁰⁴ Both parties were trying to sabotage the PDO application process. After months of

intense negotiations between the parties, they did not manage to reach any measure of compromise. Consequently, in April 2012 the CCMA quit the process, leaving the Ministry of Agriculture with no other choice than to withdraw the application.¹⁰⁵

The withdrawal of the application for the protection of *Halloumi* in Europe as a PDO was regarded as an imminent danger for the *Halloumi* industry, having to face incursions and usurpations by competitors from other countries. Under article 13 of Quality Schemes Regulation, registered names of GIs are legally protected against ‘misuse, imitation or evocation’.¹⁰⁶ This is the case even if the origin of the product is indicated or the name is translated or accompanied by expressions such as ‘style’, ‘type’, ‘method’, ‘imitation’ or similar, including the use of the product as an ingredient. Among others, Turkish-Cypriot Producers and dairy companies from Turkey and Bulgaria were threats to Cyprus.¹⁰⁷ Additionally, at that time the UK-based Greek Cypriot company, John & Pascal Ltd was extremely feared in this context, as it was planning to produce *Halloumi* cheese made from sheep and goat milk exclusively, with no bovine milk.¹⁰⁸ Likewise, the failure of the Republic of Cyprus to prohibit the German company from using the term ‘Hellim’ for its products acquired particular notability against the backdrop of its persistent attempts to secure the EU PDO label for *Halloumi* cheese produced in Cyprus.

4.2. Second effort: 2014 PDO application

In July 2014, the new Greek-Cypriot Government initiated the second effort to apply for a PDO status for *halloumi* cheese. The applicants were the Pancyprian Organisation of Cattle-Farmers (POA). On 17 July 2014, the Greek Cypriot Government submitted its PDO application to the EC along with its decision to place a ban on any other

⁹⁹ Ibid no 99, 3.

¹⁰⁰ Gisela Welz, *European Products: Making and Unmaking Heritage in Cyprus* (first published 2015, Berghahn Books, 2017), Chapter 5: ‘Origin Food’ The struggle over HALLOUMI, 105.

¹⁰¹ Gabriele Steinhauser, ‘In Cyprus, New Cheese edict gets the Goat of Dairy Farmers – As world Hungers for Halloumi, Officials want less Cow’s Milk in Mix; Curdled History’ [2012] *Wall Street Journal*, 2.

¹⁰² Ibid.

¹⁰³ Gisela Welz, *European Products: Making and Unmaking Heritage in Cyprus* (first published 2015, Berghahn Books, 2017), Chapter 5: ‘Origin Food’ The struggle over HALLOUMI, 105.

¹⁰⁴ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation* (Routledge 2018), 78.

¹⁰⁵ Ibid no 106, 105.

¹⁰⁶ Quality Schemes Regulation, art 13(1) (b).

¹⁰⁷ Ibid, no 106, 106.

¹⁰⁸ Ibid no 106, 106.

¹⁰⁹ Constantinos Pitsillides, ‘Cyprus applies to

protect Halloumi [9 July 2014] <http://cyprus-mail.com/2014/07/09/cyprus-app- lies-to-protect-halloumi/>.

¹¹⁰ Gisela Welz, ‘Pure Products, Messy Genealogies. The Contested Origins of Halloumi Cheese’ in Sara May, and others (Eds), ‘Taste-Power-Tradition: Geographical indications as Cultural Property’ (2017) 10 *Gottingen Studies in Cultural Property*, 32.

¹¹¹ European Commission- Press Release, ‘Cyprus ‘Χαλλούμι (Halloumi)/ ‘Hellim’ cheese set to receive Protected Designation or Origin Status’ (28 July 2015).

¹¹² Single Document ‘ΧΑΛΛΟΥΜΙ (HALLOUMI)/‘HELLIM, C246/9 (2015) Official Journal of the European Union.

¹¹³ Its original name is «Ενωση Κτηνοπαργαυγών και Κτηνοτρόφων».

¹¹⁴ Its original name is “Milk and Oil Products Production and Marketing Cooperative Ltd”.

¹¹⁵ As stated in the Protocol No 10 on

Cyprus-Act of Accession 2003.

¹¹⁶ Ministerial Decree 327/2014 (9 July 2014).

¹¹⁷ Case no 564/2008 (Supreme Court Decision) 1. Turkish Co-operative Dairy Factory ΚΟΟΠΣΥΤ ΟΡΤΑΚΟΪ’ 2. Turkish Cypriot Chamber of Industry v 1. the Republic of Cyprus, Ministry of Agriculture through the

Legal Service of the Republic, 2. The Attorney General of the Republic of Cyprus as a Representative of the Republic of Cyprus [11 Sep. 2008].

¹¹⁸ Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 104.

¹¹⁹ Stevenson P, ‘Say Cheese: halloumi mooted for confidence building’ [2013] *The Cyprus Mail*.

¹²⁰ Ministerial Decree No. 327/2014.

¹²¹ Case T-584/15, Case T-584/15 *Pagkyrios organismos ageladotrofon Dimosia Ltd (POA) v European Commission* [2016] EU:T:2016:510, para 8.

¹²² Ibid, para 44.

¹²³ EC – press release, ‘Cyprus ‘Χαλλούμι (Halloumi)/‘Hellim’ cheese set to receive Protected Designation of Origin status’ [28 July 2015].

¹²⁴ The Consortium of Common Food Name in the USA has filed the period

¹²⁵ Sozos-Christos Theodoulou, ‘HALLOUMI: la propriété intellectuelle du fromage emblématique de Chypre’ [2016] *Revue Francophone de la Propriété Intellectuelle* 3, 104.

country from producing a cheese named *Halloumi* or 'Hellim' until the application is processed.¹⁰⁹ In July 2015, the official application was published in the EU's Official Journal, initiating the cross-border opposition phase of the registration.

This application provides protection of both '*Halloumi*' (Χαλλούμι) and 'Hellim', covering the producers from the whole island. Nevertheless, it shall be noted that the Turkish Cypriot producers do not have access to the European Markets due to the failure of the divided island to reunite in 2004 with the EU accession. Since the Acquis Communautaire is still suspended in the North of the Island, the Turkish Cypriot are unable to apply for GIs in the EU or engage in trade activities across the Green Line as their production facilities do not comply with the EU food hygiene regime.¹¹⁰ Due to the inclusion of both names, the application was welcomed positively by the EC as an instrument of building the relations between the North-occupied part and the Greek-Cypriot government.¹¹¹

The product specification is the same as in the previous application, expressly:

*'The proportion of sheep or goat's milk or the mixture thereof must always be greater than the proportion of cow's milk. In other words, when cow's milk is used in addition to sheep or goat's milk or a mixture thereof, the proportion of cow's milk in the Halloumi must not be greater than the proportion of sheep or goat's milk or the mixture thereof.'*¹¹²

However, the industrial cheese makers have refrained from shutting down the process, despite their objections in the product specification.

The rest of the application analyses all the characteristics of the product; its appearance; its texture; its chemical composition; its production method and raw materials, even the rules for packaging. Then, a series of evidence establishing the link of the product with the geographical area of Cyprus are analysed. The terrain of Cyprus, the climate and the animals used for the production are also described to produce the 'original' *Halloumi*.

4.2.1. Challenges

Despite the increased value given to this application as a vehicle of reunification of Cyprus island and the expectation that it will officially give the traditional product the protection it deserves as a valuable Cypriot product, parties residing in the northern and south part of Cyprus have objected to it.

NATIONAL LEVEL: TURKISH- CYPRIOT PARTIES' OBJECTIONS

Eleven objections were brought under the national opposition procedure which were initiated with the publication of the application in the Official Gazette in 12 November 2012. Eight out of eleven oppositions were brought by companies residing in the northern part of Cyprus. Among others, the CTCI, the Organization of Goat and sheep farmers in Turkey,¹¹³ the KOOP SUT Ltd¹¹⁴ as well as other legal and natural persons relating to the aforemen-

tioned companies, in North Cyprus. In their opposition they argued that the Ministry of Agriculture, which is the only competent authority nominated in the PDO to provide the official controls, is incompetent to check and inspect the Turkish Cypriot producers since it does not have effective control in the North.¹¹⁵ The Turkish Cypriot Chamber of Commerce writes in its Newsletter that the application fails to provide an effective and impartial compliance verification mechanism in the North, leading to the Turkish Cypriot producers being excluded from the benefits of the possible PDO registration. These oppositions have been dismissed by the Cypriot Minister of Agriculture on 9 July 2014.¹¹⁶

The same parties have tried to file oppositions under the cross-border opposition procedure. Relying on article 51 of the Quality Schemes Regulation, but these were inadmissible since they are residents of the MS from which the PDO application originated and they could only oppose at the national level.¹¹⁷

The Turkish Cypriots' actions indicate that although the inclusion of the name 'Hellim' in the Cyprus PDO application is welcomed, the issue of the control mechanism was still a barrier to their interests being satisfied, calling for a "flawed" PDO application. It is reassured that their oppositions have mainly a political character,¹¹⁸ according to the press and academics' articles. Nevertheless, according to some sources, they were not only unhappy with the control mechanism issue but also with the fact of having the Greek Cypriot side unilaterally making a PDO application on their behalf for Hellim.¹¹⁹

The remaining three out of eleven national oppositions were filed by the POCF or '*HALLOUMIS*' for the same reason it had applied for the TMs, relating to the ratio of cow milk in the cheese production. All the oppositions were dismissed by the Ministry of Agriculture by way of decree on 9 July 2014.¹²⁰ The next step of *HALLOUMIS* company was to bring an action against the EC, asking for the annulment and suspension of the decision to publish the *Halloumi* PDO application, plus the initiation of the opposition procedure provided for in article 51 of the Quality Schemes Regulation.¹²¹ Essentially, they were arguing that the decision would cause the company financial damage because its products would not be perceived as the 'traditional' ones by the consumers.¹²² The Commission contended that the main action is inadmissible as it is not produce any legal effects capable of affecting the applicants' interests. The GC therefore declared the action as inadmissible, agreeing with the contentions of the EC.

EU LEVEL

In the EU level, nine objections were brought before the deadline of 29 February 2016. The British Government was the only EU nation that brought an opposition, with the British Government objecting on behalf of private companies, such as the John & Pascalis Ltd. Additionally, a group of European Dairy producers cooperating with the British Retail Consortium, a UK trade association also opposed the PDO application.¹²³ The other eight objections were filed by private companies trading *Halloumi* in the USA (1),¹²⁴ New Zealand (1), Australia (2), Kuwait (1) and Turkey (3).¹²⁵

4.2.2. Endeavours in overcoming the challenges

The Republic of Cyprus in coordination with the EC have been trying to find solutions to the main problems: (1) with the effective control system of the Turkish-Cypriots and (2) the struggle of the industrial producers of the *Halloumi* cheese in meeting the sheep and goat's milk demand, as specified in the PDO application and the '1985 standard'.

Regarding the 'control system' problem, the European Commission announced that a common understanding was reached in finding a temporary solution to the problem of finding an appropriate control mechanism for inspecting the Turkish Cypriot Producers of the 'Hellim' product. On 16 July 2015, the EC president Jean Claude announced the appointment of the Bureau Veritas, an independent responsible body to perform the official control tasks in the Northern part of Cyprus.¹²⁶ The reports made by the Bureau Veritas will be sent to competent authorities of the Republic of Cyprus and to the Commission.¹²⁷ In addition, on the same day of the publication of the official PDO application, the Commission adopted a proposal to amend the Green Line Regulation¹²⁸ for the purposes of facilitating trading activities on the island. This amendment is expected to provide an organised outline on the manner of functioning of the control mechanisms applied for goods in the north-part of Cyprus.

These measures were considered as a step forward in the commitment of both communities to work together on projects unifying the whole island, as Juncker has highlighted. The two leaders' understanding on the issue is highly symbolic, since *Halloumi* symbolises the "shared heritage of the island of Cyprus" as well as the link of both communities in Cyprus.¹²⁹ The EC Phil Hogan demonstrated the potential of the GI on creating new jobs and boosting farm income in rural areas across the EU.¹³⁰

In turn, the European Commission and the Cyprus Government has taken the above measures to deal with the problem of the failure of the cheese producers to meet the product specification. Firstly, by way of the Ministerial Orders No. 326/2014 and No. 325/2014, the Minister granted a ten-year transition period, aiming to help the cheese and goat farmers to reach the product specification gradually, starting by using 80% cow's milk and 20% sheep and goat milk. Meanwhile, he entered in a series of measures in order to enable producers and animal farmers to adapt their businesses into conforming to the new official standard. He has started to subsidize live-stock farmers, by giving the amount of € 26 per animal so that they can increase the necessary quantities of sheep and goats milk to replace the bovine milk within the industrial production.¹³¹ Also, by 2016 "the Government had secured 35 million euros" from the EC in order to implement the new policies aiming to achieve greater goats' and sheep's milk production.¹³² These measures are expected to increase the number of sheep and goats by 80,000, viz. growing from 370,000 to 450,000. Additionally, the AGRICYGEN partnership consisted of institutions on animal, plant and microbial genetic and genomics research from Cyprus, France, Scotland and Germany discovered a way to facilitate milk production. This was managed through genetic improvement of the local goat and sheep breeds and by

increasing the quality and production of local animal feed, given the unique conditions of the Cypriot agricultural systems.¹³³

4.2.3. Latest update: Three and a half years after the 2014 PDO application

The PDO application is a valuable protective tool for *Halloumi* Cheese, having a considerable impact on Cyprus' financial status and a boost of the farm income in rural areas across the EU. However, still in February 2019, the decision on whether to confer a PDO status on Cypriot *Halloumi* has been delayed due to political considerations. The minister of Agriculture, Costas Kadis, blamed the lack of progress on the problems concerning the Green Line Regulation and the Cyprus Problem.¹³⁴ This is arguably true, since if the situation with the island division was resolved, *Halloumi* would probably have been granted PDO status already.

On the other hand the delays and his inaction relating to the PDO application causes legal uncertainty in relation to the rights and obligations deriving from the use of the name *Halloumi* and contradicts the principles of good administration, legal assurance and sincere cooperation which should underpin the EU actions.¹³⁵

A direct consequence of the delay is the encouragement of new applications by third parties at a national, EU and international level. Moreover, more than 3000 sheep and goat farmers in Cyprus have faced enormous difficulties. It is infact those farmers that have made significant investments in recent years to modernise their units so that they can meet the expected demand and satisfy the product specifications on the 2014 PDO application.¹³⁶

Daniel Rosario, a spokesman representing the EU, announced that Brussels is in the process of examining objections submitted against *Halloumi's* certification as a PDO, on the basis of the understanding reached on the issue in 2015 after the relevant meetings with Nicos Anastasiades and the Turkish-Cypriot 'leader' of the TRNC.¹³⁷ However, no answer was given on how the process would be speeded up.

The minister of Agriculture, Costas Kadis blamed the lack of progress on the problems concerning the Green Line Regulation and the Cyprus Problem.¹³⁸ This is arguably true, since if the situation with the island division was resolved, *Halloumi* would probably already have been granted a PDO status. On the contrary, several online newspapers reported that the delay over the process is due to the disagreement between the Government and the EC with the latter flirting with the idea of direct trade of the product for Turkish Cypriots.¹³⁹

Despite the temporary solution reached between Juncker and the two leaders, Nicosia has overturned the agreement framework reached by putting forward a set of conditions to it.¹⁴⁰ Cyprus' objections concerned several matters that were subsequently made known to the government and were deemed to downgrade the sovereign rights of the Republic of Cyprus.¹⁴¹ Firstly, Nicosia requested a modification of the Green Line regulation simultaneously with the approval of *Halloumi* as a PDO, so that the product produced by the Turkish-Cypriot Community can be exported from legal ports and airports of the

Republic of Cyprus. In the same vein, assurances were requested that the current procedure followed by the Commission on the *Halloumi* PDO, will not be repeated for other PDO applications submitted by Cyprus since Cyprus would enter into a complex process of debating with the ‘TRNC’ every time Cyprus would file a PDO application. Additionally, Nicosia objected to the executive role given to Brussels by the Commission’s *Halloumi* proposal in the implementation of the *acquis Communautaire*. The last objection concerned the fact that the EC has requested that the annual reports be sent to it by the Bureau Veritas.¹⁴² According to the Cypriot Government this is another encroachment against Nicosia since normally the reports should be sent directly to the Government as the proper and relevant recipient and not to Brussels.¹⁴³

5. CONCLUSION

This article provides a thorough analysis of the current protection for *Halloumi* cheese under the trademark and geographical indications of origin ‘umbrella’, along with the challenges that halt the process of *Halloumi* cheese being sufficiently protected by intellectual property. Several observations are made at this stage, taking into account the cases of infringement, the loss of the UK as well as the challenges faced under the endeavours to acquire a PDO label. Subsequently, possible future steps or solutions to the problems identified are discussed, in the pursuit of establishing a more effective protection for *Halloumi* cheese in these fields of IP law.

5.1. Challenges under Trademark Protection: observations

All the parties’ oppositions had the common ground of refusal of article 8 (5), regarding the reputation of the earlier marks ‘*HALLOUMI*’. As it was established in the previous analysis, for a TM to be regarded as reputed, the

proprietor needs to prove that the sign is used in a TM sense, viz. indicating a particular commercial origin or, in case of collective marks distinguishing the goods of the members of the association from those of other undertakings.

Based on the analysis of relevant case-law, my conclusion is that the *Halloumi* TMs does not satisfy the definition of a certification or a collective mark. The certification mark has been proven incapable of distinguishing goods which are certified in terms of the quality, materials and other characteristics from goods that are not so certified. Instead, only the geographical origin was distinguished, as the majority of the GC’s decisions indicated the perception of the mark as a description of a specific cheese from Cyprus. In the same vein, the Collective mark has failed to distinguish goods of its undertaking from those of another undertaking. It is concluded that the term *Halloumi* has not been proven as a sign used in a TM sense. Hence, it fails to fulfil the requirement of relative ground of refusal of article 8 (5). As such, it is incapable of indicating in short form ‘valuable information’ about the origin of the product.¹⁴⁴

As deduced by the Court decisions, *Halloumi* TMs do not adequately fulfil the functions of a TM. In contrast, the word is presumed as denoting a description of a kind of a product since the majority of the relevant public perceives *Halloumi* in a generic context, merely as a description of a reputed kind of cheese produced under that name in Cyprus. This is demonstrated by the evidence submitted by Cyprus in the GC to prove the TMs’ reputation. The articles regarding dairy production in Cyprus, export figures of *Halloumi* cheese, witness statements, documents from Cyprus Official records as wells as advertisements and online newspaper extracts regarding *Halloumi* indicate the increasing popularity and the longstanding use of the term as a peculiar cheese with specific characteristics coming from Cyprus.

¹²⁶ EC- Press Release, ‘Cyprus ‘Χαλλούμι (Halloumi)/ ‘Hellim’ cheese set to receive Protected Designation or Origin Status’ [28 July 2015], 2.

¹²⁷ Ibid, 2.

¹²⁸ Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession. It has been amended by the Commission implementing Regulation 2015/1472. Hereinafter referred in as “Green Line Regulation.” The Green Line Regulation concerns the movement of goods and persons across the Green Line in Cyprus. This regulation is in force since the Cyprus’ accession to the EU in 2004. An annual report on the implementation and the application of the Regulation is sent to the EC.

¹²⁹ EC- Press Release, ‘Cyprus ‘Χαλλούμι (Halloumi)/ ‘Hellim’ cheese set to receive Protected Designation or Origin Status’ [28 July 2015], 1.

¹³⁰ Ibid.

¹³¹ Gisela Welz, ‘Assembling HALLOUMI’ in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), *Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation* (Routledge 2018), 84.

¹³² Evie Andreou, ‘€35m to boost halloumi production’ [2016] Cyprus mail <http://cyprus-mail.com/2016/10/04/e35m-boost-halloumi-production/>.

¹³³ Halloumi cheese gets a helping hand from science [2017] College of Medicine and Veterinary Medicine of Edinburgh University www.ed.ac.uk/medicine-vet-medicine/news-events/latest-news/halloumi-cheese-gets-a-helping-hand-from-science.

¹³⁴ Ibid.

¹³⁵ Evie Andreou, ‘Halloumi PDO delay due to trade issues for Turkish Cypriots’ [22 Feb 2019]. <https://cyprus-mail.com/2019/02/22/halloumi-pdo-delay-due-to-trade-issues-for-turkish-cypriots/>.

¹³⁶ Website of European Parliament: <http://www.europarl.europa.eu/doceo/>

document/P-8-2019-000484_EN.html.

¹³⁷ Evie Andreou, ‘Halloumi PDO delay due to trade issues for Turkish Cypriots’ [22 Feb 2019]. <https://cyprus-mail.com/2019/02/22/halloumi-pdo-delay-due-to-trade-issues-for-turkish-cypriots/>.

¹³⁸ Ibid no 139.

¹³⁹ Ibid no 140.

¹⁴⁰ Europe: Cyprus blames EU for taking too long over halloumi name protection [22 Feb 2019]. www.financialmirror.com/news-details.php?nid=36576.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ G.E. Evans, ‘The Strategic exploitation of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union’ in Peter K. Yu (ed), *The WIPO Journal: Analysis of Intellectual Property Issues* (2010) 1 W.I.P.O.J. 00, 161.

Under article 58(1) (b) EUTMR, a TM must not be generic. Specifically, a TM shall be revoked if, from the consumers' perception it is designating a genus of type of product rather than a product from a specific source. This must be a result of the proprietors' actions or inactions. Therefore, through this section's analysis it is apparent that the *Halloumi* marks are capable of revocation under this ground. In addition to this, the *Halloumi* marks can be invalidated under article 7(1) (b) EUTMR, for lacking distinctive character (descriptive) and under article 7(1)(d) EUTMR as a mark that has become customary in the current language. As stated by the CJEU, it is important for a modern mark to function as a vehicle of communication, "providing with various kinds of information on the goods identified by them."¹⁴⁵

Nevertheless, in the rearview mirror, the *Halloumi* TMs were arguably a good first step by the Republic of Cyprus towards establishment of sufficient protection for the traditional product. The UK Certification mark and the EU collective mark were solutions to *Halloumi* being IP-protected as these were reserving use of the mark to the authorized users who were complying with the specific quality and product-related requirements. However, these were misappropriated by the registration of slightly different TMs from those of the Republic of Cyprus (Government and the *Halloumi* Foundation), or the inclusion of such TMs in figurative ones and the labelling of different cheese products with varying flavors, shapes and qualities. Such extensive use of the name *Halloumi* has resulted in the genericness of the name. Such practice alongside the invalidation of the UK mark illustrates the weakness of TM protection of *Halloumi* cheese. Moreover, concerns are raised by actions of foreign companies such as GARMO AG for making use of the Turkish equivalent term of *Halloumi* as a marketing ploy for their products. TM protection does not cover such acts of unfair advantage and exploitation of cultural heritage.

Hence, protection of *Halloumi* cheese under TM law substantial loopholes, with the product being prone to violations and its name acquiring a generic nature.

5.2. Challenges under Geographical Indications of Origin: Observations

Due to the limitations of TM protection, the registration of *Halloumi* cheese as a PDO in the EU became a priority. Acquiring a protected designation of origin for the *Halloumi* cheese is likely the right way to secure the value and history of *Halloumi* cheese, establishing sufficient IP protection. A successful PDO registration is expected to secure a tool of marketing strategy, fair competition and rural development and as supported by Tunisia Staten, it is eligible for relief from acts of infringement.¹⁴⁶ In essence, it is easier to take legal action against any producer outside of Cyprus who unlawfully calls his/her product 'Halloumi' or 'Hellim.' Likewise, the producers themselves will be closely monitored so that the production process and the ingredients conform to the product specification of the application.

Despite the several advantages combined with the PDO registration, the PDO label *Halloumi* is still likely to face the problem of genericness, as the same problem was stressed by the GC in relation to the *Halloumi* TMs. In the same way article 58 EUTMR prohibits registration of a generic name as a TM, under articles 6 and 10 of Quality Schemes Regulation, generic names are prohibited from registration as PDO or PGI and it is also a ground for opposition. Article 3 of the Quality Schemes Regulation defines 'a name that has become generic' as the name of an agricultural product, which, 'although relating to the place or the region' of production or marketing, has become the common name of an agricultural product.

Solution to the 'Genericness problem'

Nevertheless, in PDO and PGI protection, despite that in principle, registration is refused to geographical names that have become generic under article 3 of the Quality Schemes Regulation, fewer obstacles exist to recovering exclusive use of a name under PGI, than under TM.¹⁴⁷ In the cases of "Feta", "Parmesan" and "Bayerisches Bier," the CJEU has given a restrictive interpretation to the exclusion of generic names. To that effect, it has established that if the name reserves the ability to evoke the place of production, it will likely be accepted for registration. The closest example is the Feta case, where the court rejected claims that 'Feta' became the generic name for a type of soft, white

¹⁴⁵ Case C-487/07 L'Oréal SA Lancôme parfums et beauté & Cie Laboratoire Garnier & Cie v Bellure NV Malaika Investments Ltd Starion International Ltd [2009] ECR I-5185 ETMR 55, Opinion of AG Mengozzi at [54].

¹⁴⁶ Tunisia L. Staten, 'Geographical Indications Protection Under the TRIPS Agreement: Uniformity Not Extension' [2005] 87 J. Pat. & Trademark Off Soc'y, 221, 222.

¹⁴⁷ G.E. Evans, 'The Strategic exploitation of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union'

in Peter K. Yu (ed), The WIPO Journal: Analysis of Intellectual Property Issues [2010] 1 W.I.P.O.J. 00, 172.

¹⁴⁸ Joined cases C-465/2002 and C-466/2002 Germany and Denmark v Commission [Feta] [2005] ECR I-9115.

¹⁴⁹ Ibid, no 146, 170.

¹⁵⁰ Anonymous, 'ECONOMY: Cyprus loses halloumi trademark in the UK' [6 December 2018]. <http://www.financialmirror.com/news-details.php?nid=36246>.

¹⁵¹ CYPRUS: UK firm says it took halloumi trademark to save exports', 11 December

2018 <http://www.financialmirror.com/news-details.php?nid=36262>.

¹⁵² Gisela Welz, 'Assembling HALLOUMI' in Jeremie Forney, Chris Rosin, Hugh Campbell (eds), Agri- environmental Governance as an Assemblage: Multiplicity, Power and Transformation (Routledge 2018) 90.

¹⁵³ Ibid, 91.

¹⁵⁴ Motion for a Resolution on Protecting Community productions of cheeses with designations of origin (28 April 1989) EEC Parliamentary Session Documents PE 128 390/Fin (withdrawn).

cheese and gave exclusive rights in the name to producers residing in Greece to market their products throughout the EU.¹⁴⁸

In establishing whether a name has become generic or not, the CJEU considered, inter alia, the following criteria; firstly; the determination of the degree of historic connection between a specific place and the origin of the product in question. Secondly, the product status under national law is considered, in the sense that the country's government enacts legislation to protect the name, the traditional practices and locally sourced raw materials, as it was the case in 1998 for Feta in Greece.¹⁴⁹ Thirdly, the character and the size of the market are important factors, as in Feta case, 85% of Community consumption of Feta, per capita, took place in Greece with 10 kilos per person in a year. The pattern, character and duration of production, the consumer perception and marketing of the product were also taken into consideration.

Taking all factors into account, it is likely that the name *Halloumi* will carry a geographical and non-generic connotation. This is supported by these submissions; The biggest consumer of *Halloumi* cheese is Cyprus, followed by the UK; the Ministerial orders enacted by the Cyprus' Government aiming to reach the desirable product specification which would be closer to the traditional mixture; the perception of the relevant public as a type of cheese, that is originated from Cyprus as suggested also by the Court. Ultimately, one may say that *Halloumi* is to Cyprus what Feta is to Greece: nothing more than a part of the country's fabric and national history, worthy of protection.

6. PROPOSED FUTURE STEPS/ALTERNATIVES

Alternatives were proposed by several commentators, academics, and even interested parties to resolve the problems of product specification concerning the ingredients and the percentage of each type of milk contained in the product.

An alternative solution has been suggested by George Petrou, the President of the Cyprus Dairy Producers' Association. That is, for the rubbery cheese to be registered as a PGI, instead of a PDO.¹⁵⁰ The difference between the PDO and the PGI, is that the main characteristic of a PGI product is a certain quality of feature that is attributable to its geographical origin, whereas a PDO product is exclusively determined by the geographical environment. This suggestion lies on the lower threshold that a product needs to satisfy to be protected as a PGI, compared to a PDO. As stated in section 4.1.1, the characteristics of the product are not the determining factors for registration of a PGI. Rather, proof of reputation of geographical origin by drawing on meaningful historical evidence is sufficient for a product to be registered as a PGI.

In addition, Christopher Pissarides has proposed a solution that could arguably resolve the dispute between the Cyprus' government and the British company, as well as the Cattle farmers and goat and sheep milk producers.¹⁵¹ He suggested the submission of two separate PDO registration files for *Halloumi* cheese with the one including the label '*Halloumi*' and no specification as to the kind of milk should be made of and the other including the label '*Village Halloumi*' specifying that it will be solely produced

from goat and sheep milk. Interestingly, he paralleled this proposal with the Italian paradigm of *Mozzarella* cheese. For the Italians, *Mozzarella* is a cheese exclusively made from Italian buffalo's milk. However, due to cows outnumbering the buffalo, internal disputes arose with *Mozzarella* made of a mixture of milks. In 1998, a solution was given by having two separate registrations for the cheese; *Mozzarella* is protected as 'Traditional Specialities Guaranteed,' specifying that the cheese is produced according to a traditional recipe, without however specifying the type of milk used. Also, a special PDO registration exists for the "*Mozzarella di Bufala Campana*," covering only *mozzarella* cheese made solely from Buffalo milk which may only be produced in Campania region, where it originates. This is arguably a good proposal that could resolve the disagreements regarding the use of cow milk in the *Halloumi* production and the existence of different products with different compositions.

According to Gizela Welz,¹⁵² the insistence of putting the entire output in the PDO application resulted in giving the product only 'a resemblance of traditionality.'¹⁵³ She added that the application should specify the cheese being made solely from goat and sheep milk, designating a regional product. One example is the designation for '*Halloumi Pafitiko*,' which is *Halloumi* made from the Paphos area. This would have been in accordance with the usual practice for applications throughout Europe. Another proposal was to register the product as 'a cheese made with milk from free-range grazing animals in highland and mountain areas of Cyprus.'

Halloumi is more than a white cheese made in Cyprus; it is an indispensable part of the country's (agri)cultural heritage. Although there is no magic formula to protect the product, it is important to surpass legal hindrances and achieve a sustainable level of IP protection to the benefit not only of the country but also European heritage. What is of equal significance is the preservation of the value of the authentic *Halloumi*, as a cardinal element of the Island's culture, so that imitation products do not misappropriate the authentic ones' genuineness. As designations form part of a rich national heritage, which must be preserved according to the EP,¹⁵⁴ a positive response to the PDO application by the Commission is of paramount significance.



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