



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

[Handwritten signature]

File - AROJ

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Robert A. Selk
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Administrator
Division of Legal Services
608/266-0332
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April 17, 1995

Mr. Christopher Green
Legal Counsel
Governor's Office
115 East, State Capitol
Madison, Wisconsin 53702

Re: Fromageries Bel Use of Wispride

Dear Mr. Green:

On March 30, 1995, the Governor wrote to the Attorney General authorizing him to represent the State of Wisconsin in the dispute with Fromageries Bel over the use of the "Wispride" label. Our office has done a preliminary review of the legal issues and we conclude that the legal merits of Wisconsin's concerns justify pursuit of the matter. Assistant Attorney General Robert Larsen (266-3076) has been assigned to the case.

This dispute involves the use of the "Wispride" trademark and consequently is expected to require expertise in trademark law and administrative proceedings in Washington, D.C. I believe it is therefore advisable, pursuant to sec. 14.11(2)1., Stats., to retain special counsel with expertise in this area of law to assist the Department of Justice. Assistant Attorney General Larsen would be pleased to confer with you on selecting the appropriate counsel.

Our preliminary assessment also concludes that market surveys may be required to establish our position. Normally this expense could come from our legal expenses appropriation at sec. 20.455(1)(d), Stats. However, because of the ongoing large legal expenses arising out of our Menominee treaty litigation, moneys may not be available. As a partial solution, we will explore obtaining a contribution from the Wisconsin Cheesemakers Association for survey costs. We will keep you informed of this problem.

Mr. Christopher Green
April 17, 1995
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I would be pleased to provide any additional information you may request.

Sincerely,



Robert A. Selk
Assistant Attorney General
Administrator
Division of Legal Services

RAS:lkw

cc: ✓ Rep. Al Ott
Michael Perino
Robert Larsen

SC\FROMAGER.LTR



114 East, State Capitol
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Madison, WI 53707-7857

JAMES E. DOYLE
ATTORNEY GENERAL

NEWS RELEASE

For Immediate Release
November 14, 1995

For More Information Contact:
Jim Haney 608/266-1221

MADISON - Attorney General James Doyle announced today that his office has filed a lawsuit in federal district court to prevent the continued use of the WISPRIDE trademark by a French company which manufactures cheese in Kentucky.

Doyle said that a civil complaint was filed against Fromageries Bel, Inc., Paris, France, an international company with its national headquarters in Fort Lee, New Jersey. The complaint alleges that Fromageries Bel's use of the WISPRIDE trademark constitutes false advertising and seeks cancellation of the trademark's registration.

The WISPRIDE trademark originated with the Calumet Cheese Company of Hilbert, Wisconsin, in 1937 and since then has been used exclusively to promote Wisconsin cheese products. In 1976, the Calumet Cheese Company was acquired by the Nestle Company and became known as the WISPRIDE Division. In 1985, the WISPRIDE Division was purchased by Fromageries Bel.

Cheese production using the WISPRIDE label continued until January, 1995, when Fromageries Bel gave notice that it was closing the Hilbert operation and would be concentrating on its cheese processing operation in Kentucky. Over intense objections from Wisconsin citizens and officials, Fromageries Bel stated that it intended to continue to market its products under the WISPRIDE label even though it no longer had any cheese operations in Wisconsin.

According to Doyle, federal law provides that trademark registration is subject to cancellation if it is being used "so as to misrepresent the source of the goods."

"It is clearly a misrepresentation for a French company with domestic headquarters in New Jersey and its main plant in Kentucky, to market cheese in a way that indicates its products are from Wisconsin," Doyle said. "Market research shows overwhelmingly that people who buy WISPRIDE products believe they are purchasing Wisconsin cheese."

(over)

Page 2.

The Department of Justice's lawsuit, filed today (Tuesday, November 14, 1995) in the U.S. District Court for the Eastern District of Wisconsin in Milwaukee, seeks a court order prohibiting Fromageries Bel from using the WISPRIDE label to promote any cheese products made outside Wisconsin.

###



Al Ott

State Representative • 3rd Assembly District

NEWS RELEASE

FOR IMMEDIATE RELEASE
FOR FURTHER INFORMATION CONTACT:
State Representative Al Ott

November 15, 1995

(608) 266-5831

STATE SUES OVER USE OF "WISPRIDE" LABEL

Madison...Based on a request from State Representative Al Ott (R-Forest Junction) to investigate Fromageries Bel for possible trademark infringement, Attorney General James Doyle filed a civil complaint in federal district court against the company on November 14, 1995.

Soon after Fromageries Bel announced it would be moving its cheese processing operations from Hilbert, Wisconsin to Kentucky, Ott contacted both Governor Thompson and Doyle requesting that the state try to get the WISPRIDE label released by the company. At the same time, Ott unsuccessfully requested Fromageries Bel officials to reconsider closing the Hilbert plant.

"Once Fromageries Bel decided to close down their plant in Hilbert, there was no changing their mind," said Ott. "The displacement of those who worked for Fromageries Bel is very unfortunate. Hopefully, we will at least be able to salvage the WISPRIDE label for a company that actually operates in Wisconsin."

The lawsuit is based on a provision under federal law which states that trademark registrations are subject to cancellation if they are being used "so as to misrepresent the source of the goods."

"By continuing to use the WISPRIDE label on their products Fromageries Bel is clearly trying to lead consumers to believe the cheese they are purchasing is made from quality Wisconsin dairy products, even when the company no longer operates a plant in Wisconsin" said Ott. "This is not right!"

Ott hopes to get the WISPRIDE label released from Fromageries Bel so that it can be purchased by a company in Wisconsin. The trademark began with the Calumet Cheese Company of Hilbert in 1937. The WISPRIDE name has been used nationally to promote Wisconsin cheese products.

"I'm pleased that the Governor and the Attorney General are pursuing this matter," said Ott. "As America's Dairyland, we need to protect our image and our products."



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL
Burneatta L. Bridge
Deputy Attorney General

November 16, 1995

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P.O. Box 7857
Madison, WI 53707-7857

Robert W. Larsen
Assistant Attorney General
608/266-3076
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The Honorable Alvin Ott
State Representative
318 North, State Capitol
Madison, Wisconsin 53702

Re: State of Wisconsin v. Fromageries Bel, Inc.

Dear Representative Ott:

Enclosed for your information is a copy of the complaint we have filed with respect to the WISPRIDE mark. I would appreciate your continued support.

Sincerely,

Robert W. Larsen
Assistant Attorney General

RWL:mw

Enclosure

REP. AL OTT
P/U
unfort. can't regain
employment & benefits
perhaps

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT OF WI
FILED

NOV 14 1995

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.

FROMAGERIES BEL, INC.,

95-0-2156

Defendant.

COMPLAINT

Plaintiff State of Wisconsin alleges and complains as follows:

NATURE OF ACTION

1. This action challenges the misuse of the word and trademark WISPRIDE by the defendant, Fromageries Bel, Inc. In general, the State of Wisconsin believes and asserts that the defendant's use of the WISPRIDE mark with cheese products indicates that the associated products come from the State of Wisconsin and its cheese industry, when in fact they do not. The attendant deception is aggravated by the fact that the WISPRIDE mark was created and used in the Wisconsin cheese industry for nearly 60 years before the defendant decided to take the mark out of Wisconsin. For the reasons set forth in more detail below, the State of Wisconsin asserts that the current misuse of the WISPRIDE mark by the defendant constitutes false designation of origin under 15 U.S.C. § 1125(a) and grounds for cancellation of the registration of the WISPRIDE mark under 15 U.S.C. § 1064.

JURISDICTION

2. Pursuant to 15 U.S.C. § 1121, this court has jurisdiction over the claim under 15 U.S.C. § 1125(a), and because the claim involves a registered trademark, this court has concurrent jurisdiction to cancel the trademark registration pursuant to 15 U.S.C. § 1119.

VENUE

3. Proper venue in this action is the Eastern District for Wisconsin, pursuant to 28 U.S.C. § 1391(b), because: The word and trademark WISPRIDE is at the heart of this action. The mark was originally created and used by the Calumet Cheese Company in connection with the manufacture of cheese products at Hilbert, Calumet County, Wisconsin, located in the Eastern District of Wisconsin. Use of the mark in connection with cheese manufactured in Hilbert spanned the time period from 1937 until January 1995. During that period, the WISPRIDE mark was used in ways to strengthen its association with the State of Wisconsin and its reputation for cheese products, above and beyond the obvious association embodied in the word itself. The defendant herein acquired and operated the Hilbert operation using the WISPRIDE mark for the last 10 years, from 1985 to January 1995. The event that precipitated this cause of action was the action of Fromageries Bel to cease operations in Hilbert in January 1995, and to relocate all pertinent operations to Kentucky. Fromageries Bel left Wisconsin but has continued to use the WISPRIDE mark to market its Kentucky

products throughout the country. In the context of this history and action, it is asserted that the Eastern District for Wisconsin is the "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred," thus qualifying as a proper place of venue for this action under 28 U.S.C. § 1391(b).

PARTIES

4. The State of Wisconsin is one of the sovereign states of the United States and has its capitol at Madison, Wisconsin.

5. Defendant Fromageries Bel, Inc., is an international company engaged in the processing and sale of cheese products. The company's world headquarters is located in Paris, France, but the owner of record of the mark herein is Fromageries Bel, Inc., a New Jersey Corporation, located at 2050 Center Avenue, Fort Lee, New Jersey 07824.

FIRST CAUSE OF ACTION

6. Reallege the allegations in paragraphs 1 to 5.

7. The State of Wisconsin is rightfully known as "America's Dairyland."

8. As of the close of 1993, Wisconsin ranked number one among all states in milk production and all manner of cheese, except Swiss. In the categories of processed cheeses, Wisconsin produced 38% of the processed cheese in the United States and 78% of the cold pack cheese and cheese foods.

9. The dairy industry contributed \$17 billion to the Wisconsin economy in 1991. The bulk of Wisconsin's milk (86.5% to

be more exact) is converted to cheese. The Wisconsin economy is extremely intertwined and interdependent; nearly every sector in Wisconsin is linked, either indirectly or through induced relationships, to dairy in general and cheese production in particular.

10. The cheese industry in Wisconsin employs about 12,800 people with a payroll of \$328.1 million as of 1993. The industry generates approximately \$20 million in personal and corporate income taxes annually, payable to the State of Wisconsin Treasury which is used in turn to help fund the operations of the State of Wisconsin.

11. Because of the nature and importance of the dairy industry to the State of Wisconsin, the state engages in quasi-commercial activities and has quasi-commercial interests in the industry. For example, one of the primary duties of the Wisconsin Department of Agriculture, Trade and Consumer Protection is set forth as follows:

(3) PROMOTION OF AGRICULTURE. To promote the interests of agriculture, dairying, horticulture, manufacturing, commercial fishing and the domestic arts and to advertise Wisconsin and its dairy, food and agricultural products by conducting campaigns of education throughout the United States and in foreign markets. Such campaigns shall include the distribution of educational and advertising material concerning Wisconsin and its plant, animal, food and dairy products. The department shall coordinate efforts by the state to advertise and promote agricultural products of this state, with the department of development where appropriate. The department shall submit its request and plan for market development program expenditures for each biennium with its biennial budget request. The plan shall include the identification and priority of expenditures for each market development program activity.

Sec. 93.07(3), Wis. Stats. Also, secs. 93.07(17) and 93.40, Wis. Stats.

12. The State of Wisconsin recognizes the importance of identifying product origin and takes measures to ensure that dairy products identified as coming from Wisconsin satisfy the highest standards for quality. The state has an extensive quality control program which is administered by the State of Wisconsin Department of Agriculture, Trade and Consumer Protection. Ch 97, Wis. Stats., and chs. ATCP 60, 69, 80, and 81, Wis. Admin. Code.

13. The state has established an official Wisconsin cheese logotype pursuant to sec. 100.057, Wis. Stats. and §§ ATCP 81.80 to 81.83, Wis. Admin. Code and has undertaken other legislative and regulatory measures intended to enhance and maintain the integrity of the relationship between the State of Wisconsin, its cheese industry and the products the industry provides to the international consuming public (e.g., cheese grading and identification under sec. 97.177, Stats., and ch. ATCP 81, Wis. Admin. Code).

14. To a very real extent, the State of Wisconsin and the cheese industry are an economic partnership. The state is involved in promoting the industry and establishing and implementing quality controls for its products. In return the state and its citizens share in the economic success of the industry.

15. However, the dairy component of the economy of the State of Wisconsin is not so big that it is oblivious to losses. There is ample reason for concern about recent declines in milk

production and even larger losses in market shares for milk and cheese.

16. The State of Wisconsin, through its governor, prominent legislators and the attorney general, believe that use of the trademark WISPRIDE by the current owner, Fromageries Bel, Inc., will adversely affect Wisconsin's interests. The WISPRIDE mark is associated with cheese that comes from Wisconsin both as an historical fact and as a matter of consumer association. In 1985, Fromageries Bel acquired the WISPRIDE mark along with the WISPRIDE Division from the Nestle Company. The Nestle Company had previously acquired the original and historical user of the WISPRIDE mark, the Calumet Cheese Company located in Hilbert, Wisconsin, and made it the WISPRIDE Division. The WISPRIDE mark was initially registered to the Calumet Cheese Company, Inc. in 1937, and has been used exclusively in connection with cheese products made in the State of Wisconsin since 1937, until this year. In January of 1995, Fromageries Bel closed the cheese operation in Hilbert. Since that time, Fromageries Bel has had no cheese manufacturing or processing operation in the State of Wisconsin. Rather, their only cheese processing operation in the United States is located in Kentucky. Yet, Fromageries Bel continues to use the WISPRIDE mark on its products and has stated its intention to continue to do so. It is believed that the sale of cheese products bearing the WISPRIDE mark will supplant, coextensively, the sale of cheese products that come from Wisconsin in fact. To the extent this happens, it causes economic damage to the economy of the State of Wisconsin. Moreover, the word WISPRIDE

denotes the endorsement of the people of Wisconsin that they as citizens and workers have pride in the product so labelled. The reputation of the people and products of the State of Wisconsin will be damaged to the extent that any WISPRIDE product does not meet the high standards of the State of Wisconsin and any negative publicity relating to any WISPRIDE product will no doubt have an adverse impact on the cheese industry and citizens of the State of Wisconsin.

17. In particular, the use of the WISPRIDE mark by Fromageries Bel misrepresents the source of the product as being the State of Wisconsin. The reality and severity of the misrepresentation is established by a professional "Study to Determine the Extent to Which the Current Labeling for WISPRIDE Cheese Misrepresents Its Source of Manufacture" conducted by the New York firm of Guidelines Research Corporation. The conclusion of the study is stated as follows:

Among test group respondents who were shown the WISPRIDE mark as it is currently used in the marketplace, 46% of respondents named Wisconsin as the place where the cheese is manufactured and 36% identified the mark WISPRIDE as the basis of this belief. This is a significant and substantial level of misunderstanding as to the source of this product.

A copy of the "conclusions" section of their report is attached hereto as Exhibit A.

18. The use of the word and mark WISPRIDE by Fromageries Bel on or in connection with the sale of cheese products in the United States constitutes false designation of origin which is likely to cause confusion or mistake or to deceive the consuming public as to the origin, sponsorship or approval of such products by the State

of Wisconsin or its cheese industry or citizens. The State of Wisconsin believes its interests are likely to be damaged by such acts and therefore Fromageries Bel is liable for the same under 15 U.S.C. § 1125(a)(1)(A).

19. The use of the word and mark WISPRIDE by Fromageries Bel in commercial advertising or promotion, on or in connection with the sale of cheese products in the United States, constitutes misrepresentation of the geographic origin of Fromageries Bel's products. The State of Wisconsin believes that its interests are likely to be damaged by such acts and therefore Fromageries Bel is liable for the same under 15 U.S.C. § 1125(a)(1)(B).

SECOND CAUSE OF ACTION

20. Reallege the allegations in paragraphs 1 through 17.

21. The mark is being used by or with the permission of Fromageries Bel so as to misrepresent the source of the goods in connection with which the mark is used. The State of Wisconsin believes that its interests are likely to be damaged by this misrepresentation and therefore the trademark registration for the mark ought to be canceled pursuant to 15 U.S.C. § 1064(3).

WHEREFORE, plaintiff demands judgment:

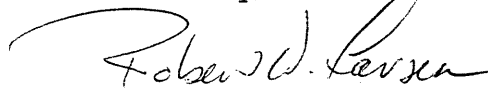
1. Enjoining the defendant from using the word and mark WISPRIDE in connection with the advertisement or sale of any cheese products manufactured outside the State of Wisconsin.

2. Canceling the trademark registration for the WISPRIDE mark.

3. Awarding plaintiffs reasonable attorneys' fees and costs.
4. Such other relief as may deemed to be appropriate.

Dated this 13th day of November, 1995.

JAMES E. DOYLE
Attorney General



ROBERT W. LARSEN
Assistant Attorney General
State Bar # 1013361

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
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wispride\complaint

CONCLUSIONS

Among test group respondents who were shown the WISPRIDE mark as it is currently used in the marketplace, 46% of respondents named Wisconsin as the place where the cheese is manufactured and 36% identified the mark WISPRIDE as the basis of this belief. This is a significant and substantial level of misunderstanding as to the source of this product.

As might be expected, among respondents having a previous familiarity with this brand, the level of misunderstanding was even greater: 67% of respondents in the test group who had previously seen or heard of this brand named Wisconsin and 47% of them identified the WISPRIDE mark as the basis of this belief.

Even among respondents in the test group who had never seen or heard of the brand previously, 34% identified Wisconsin as the source of the cheese and based this identification on the WISPRIDE mark. We therefore conclude that a significant and substantial number of consumers who are unaware of the original site of manufacture will be misled into believing that the product is now manufactured in Wisconsin, based on the WISPRIDE mark as currently in use.

In the control group, among those seeing WISPRIDE and THE PRIDE OF WISCONSIN marks, 83% of respondents named Wisconsin as the place of manufacture and 78% identified one of the marks as the basis for this belief. Among control group respondents having no previous familiarity with the brand, 78% named Wisconsin and identified one of the marks as the basis for thinking so.

Thus, while the absence of the give-away mark, THE PRIDE OF WISCONSIN, serves to reduce misrepresentation as to source from 79% to 36% among all relevant consumers and from 78% to 34% among respondents previously unaware of the brand, these reduced levels of misrepresentation as to source, as previously noted, remain significant and substantial.

JUL 26 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.
FILED
JUL 25 1996
AT _____ O'CLOCK
SOFRON B. NEDILSKY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 95-C-1156

FROMAGERIES BEL, INC.,

DECISION AND ORDER

Defendant.

APPEARANCES:

For Plaintiff:

Robert W. Larsen
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
Telephone: 608-266-3076

For Defendant:

Jess M. Collen
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Scarborough Station
Scarborough, N.Y. 10510-0806
Telephone: 914-941-5868

RECEIVED
JUSTICE

JUL 26 1996

Copy mailed to attorneys for parties by the Court pursuant to Rule 77 (d) Federal Rules of Civil Procedures.

I. OVERVIEW

Plaintiff, the State of Wisconsin ("Wisconsin"), filed this action against defendant Fromageries Bel, Inc. (now known as Bel Cheese USA, Inc., hereinafter "Bel Cheese") on November 14, 1995. In its complaint, Wisconsin alleges that Bel Cheese's current use of the name and mark WISPRIDE violates the Lanham Act as a false designation of the origin, sponsorship or approval of WISPRIDE products, 15 U.S.C. § 1125(a)(1)(A). The state also alleges the WISPRIDE mark misrepresents the geographic origin of these products. 15 U.S.C. § 1125(a)(1)(B). Wisconsin seeks to enjoin the use of WISPRIDE in connection with the advertisement or sale of cheese products manufactured outside Wisconsin. Furthermore, as the WISPRIDE mark is allegedly a misrepresentation of origin, Wisconsin seeks to cancel registration of the mark pursuant to 15 U.S.C. § 1064(3).

This case was referred to United States Magistrate Judge Aaron E. Goodstein for pretrial processing pursuant to 28 U.S.C. § 636(b). Jurisdiction of these claims appears to be proper under 15 U.S.C. §§ 1119 and 1121, although there is an unresolved issue as to Wisconsin's standing to bring these claims.

Bel Cheese filed a motion to dismiss based upon the following

three grounds. First, Wisconsin has failed to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Second, Wisconsin lacks standing under 15 U.S.C. § 1125(a); this motion is considered under Fed. R. Civ. P. 12(b)(1). Third, venue is improper. 28 U.S.C. § 1391(b)(2); Fed. R. Civ. P. 12(b)(3). On April 22, 1996, this court received the magistrate's recommendation to deny the motion to dismiss. On May 9, 1994, Bel Cheese filed objections to the recommendation. The magistrate's recommendations are before the court. Although it appears Bel Cheese's objections may not have been timely filed, the court has considered them.

II. FACTS

The following facts are taken from Wisconsin's complaint. As appropriate on a motion to dismiss, the court accepts the complaint's allegations as true.

The WISPRIDE mark was initially registered in 1937 to the Calumet Cheese Company, Inc. ("Calumet") of Hilbert, Wisconsin, and was used exclusively in connection with cheese products made in the State of Wisconsin until 1995. The Nestle Company acquired Calumet and the WISPRIDE mark at some point and made Calumet

into its WISPRIDE Division. In 1985, Bel Cheese acquired the WISPRIDE mark along with the WISPRIDE division. In January 1995, Bel Cheese closed the cheese operation in Hilbert. Since then, Bel Cheese has had no cheese manufacturing or processing operation in Wisconsin. Instead, Bel Cheese's only United States processing operation is in Kentucky. Bel Cheese continues to use the WISPRIDE mark on its products and has stated it intends to continue.

Wisconsin, known as "America's Dairyland," was in 1993 the number one state in production of milk and of all cheeses except Swiss. Of Wisconsin milk, 86.5% is converted to cheese. In fact, Wisconsin produces 38% of all processed cheese in the United States and 78% of cold pack cheese and cheese foods.

The dairy business was a \$17 billion industry in Wisconsin in 1991. So pervasive is the dairy industry that nearly every economic sector in Wisconsin is linked generally to the dairy business and specifically to cheese production. In 1993, the Wisconsin cheese industry employed about 12,800 people and had a payroll of \$328.1 million. The industry generates about \$20 million in personal and corporate income taxes annually for Wisconsin, and the state uses these revenues to fund state operations.

Based upon the nature and importance of the dairy industry in the state, Wisconsin alleges it "engages in quasi-commercial activities and has quasi-commercial interests in the industry." These include programs of the state Department of Agriculture, Trade and Consumer Protection to promote agriculture through the advertisement of food and dairy products, to ensure that Wisconsin dairy products satisfy the highest quality standards, and to identify Wisconsin cheese with an official Wisconsin cheese logotype in order to "enhance and maintain the integrity of the relationship" among the state, its cheese industry, and Wisconsin cheese products. Thus, Wisconsin and its cheese industry are an economic partnership that allows the state and its citizens to share in the cheese industry's economic success.

Wisconsin alleges that the sale of WISPRIDE cheese products will supplant, coextensively, the sale of cheese products that actually come from Wisconsin. The dairy sector of Wisconsin's economy is susceptible to losses, as recent declines in milk production and in market shares for milk and cheese show. When such declines occur, they damage Wisconsin's economy. In addition, to the extent that WISPRIDE products do not meet the high standards that cheese produced in Wisconsin must meet, WISPRIDE products will damage the reputation of Wisconsin's people, cheese industry and products.

III. LEGAL STANDARDS AND ANALYSIS

A. Standard of Review

Where a party objects to a magistrate's findings, the district court judge must make *de novo* determinations as to these findings. 28 U.S.C. § 636(b)(1)(C); *U.S. v. Raddatz*, 447 U.S. 667, 673-76 (1980); *Delgado v. Bowen*, 782 F.2d 79, 82 (7th Cir. 1986); *Ramirez v. Turner*, 991 F.2d 351, 354 (7th Cir. 1993). The court may review other portions of the recommendation if appropriate. *Delgado*, 782 F.2d at 82 (7th Cir. 1986); Local Rule 13.02(b). "Although, in absence of such objections, the Court need not make any review, 'the better practice' is to afford 'some level of review' to dispositive issues, even where a *de novo* determination is not required." *Zimbauer v. Milwaukee Orthopaedic Group, Ltd.*, No. 93-C-1298, 920 F. Supp. 959, 963 (E.D. Wis. 1996) (Warren, J.) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir.), *cert. denied*, 484 U.S. 837 (1987)). The district court may adopt the recommendation in part or in whole and has final authority of judgment in the case. *Delgado*, 782 F.2d at 82.

B. Rule 12(b)(6) Motion: Failure to State a Claim

The court may dismiss a complaint pursuant to a Rule 12(b)(6) motion "only if 'it is clear beyond doubt that the non-movant can plead no facts that would support his claim for relief.'" *Palda v. General Dynamics Corp.*, 47 F.3d 872, 874 (7th Cir. 1995) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In considering dismissal, the court must "accept as true all the plaintiff's well pleaded factual allegations and the inferences reasonably drawn from them." *Gibson v. City of Chicago*, 910 F.2d 1510, 1520-21 (7th Cir. 1990).

The court will undertake its analysis in three parts. First, the court will examine Wisconsin's complaint as it relates to Section 43(a) of the Lanham Act. Second, the court will consider the complaint with respect to cancellation proceedings. Finally, the court will consider the role of the presumption of validity for a registered trademark.

1. Section 43(a) Liability

The use of the WISPRIDE mark by Bel Cheese allegedly misrepresents the source of the product as Wisconsin and the Wisconsin dairy industry. The relevant provisions of Section 43(a)(1) of the Lanham Act, as amended, make liable:

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's good, services, or commercial activities....

Wisconsin proceeds under both theories: a false designation as to the origin, sponsorship or approval of WISPRIDE cheese products by Wisconsin, its cheese industry or its citizens, Complaint ¶ 18; and a false description or representation of Wisconsin as the geographic origin of the WISPRIDE cheese products. Complaint ¶ 19.

Wisconsin has stated claims under both theories for which relief may be granted. Consumers might believe, based on the facts alleged, that WISPRIDE cheese has its geographical origin in Wisconsin and thus in the Wisconsin dairy industry. The mark WISPRIDE was used on cheese made in Wisconsin for 60 years.

The consumer survey also supports this conclusion. While the survey, cited in the complaint, has not been admitted into evidence, it is enough at this stage that Wisconsin has alleged accurately the results of the study and may be able to prove them. The use of the study makes the charge of consumer confusion more than an unsupported allegation. Bel Cheese's criticism of the study is what is lacking in support.

In the study, 46% of survey respondents believed WISPRIDE cheese was manufactured in Wisconsin, and 36% so believed because of the WISPRIDE mark. Among respondents previously familiar with the WISPRIDE brand, 67% named Wisconsin as the place of manufacture, and 47% of them identified the WISPRIDE mark as the reason for this belief. Thus, there is sufficient support for allegations and inferences that consumers believe the WISPRIDE mark indicated the cheese is made in Wisconsin.

Completing its first theory, Wisconsin has also adequately alleged that the state could be wrongly affiliated, connected, or associated with WISPRIDE cheese as an origin, sponsor, or approver of WISPRIDE cheese. Wisconsin has undertaken significant efforts to promote Wisconsin cheese and to ensure its quality. Based on these efforts and on consumers' belief that WISPRIDE cheese is produced in Wisconsin, consumers could

believe Wisconsin has spoken for the quality of WISPRIDE cheese. This would certainly be true if consumers are aware of Wisconsin's quality control efforts. While Wisconsin does not explicitly allege that consumers rely upon Wisconsin's endorsement or quality control program in selecting cheese, this is a fair inference based on the existence of Wisconsin's promotional and quality control programs, the significant role the Wisconsin cheese industry plays, and consumers' knowledge of Wisconsin as a site of cheese production.

2. Cancellation

Wisconsin alleges that the mark is being used by or with the permission of Bel Cheese to misrepresent the source of goods of the cheese products. 15 U.S.C. § 1064(3); Complaint ¶ 21. Under Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), a petition to cancel registration of a mark may be filed "if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used."

As indicated above, the complaint allows a fair inference that the WISPRIDE mark misrepresents the geographical source of

WISPRIDE cheese. Thus, Wisconsin has adequately alleged grounds for bringing a cancellation petition.¹

3. Effect of Presumption of Validity

Bel Cheese focuses its argument on the prima facie validity of the WISPRIDE mark under section 7(b) of the Lanham Act.

A certificate of registration of a mark upon the principal register provided by the Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.

15 U.S.C. § 1057(b); see also 15 U.S.C. § 1115(a); see also *Union Carbide Corp. v. Ever-Ready Inc.*, 531 F.2d 366, 377 (7th Cir.), cert. denied, 429 U.S. 830 (1976). It argues that WISPRIDE is inherently distinctive and therefore a clearly protectible mark. This fact, combined with the mark's registration since 1936, indicates the mark is prima facie valid.

Bel Cheese's arguments and authorities are well removed from

¹Some case law indicates that in a § 14(3) cancellation petition, the petitioner must allege specific acts that show actual or implied intent to trade off the reputation of another. See, e.g., *Osterreichischer Molkerei-und Kasereiverband Registrete Genossenschaft mit Beschränkter Haftung v. Marks and Spencer Limited*, 203 U.S.P.Q. 793, 794 (T.T.A.B. 1979); *Paul Sullivan Tennis Sportswear, Inc. v. Balth. Blicke's Wwe*, 213 U.S.P.Q. 390, 392 (T.T.A.B. 1982); *McDonnell Douglas Corp. v. National Data Corp.*, 228 U.S.P.Q. 45, 47 (T.T.A.B. 1985). However, as parties have not made this argument, the court will not go beyond the issues presented to address this matter.

the context of this case. First, Wisconsin is not attacking the inherent distinctiveness of the WISPRIDE mark. Second, while the grant of registration by the Patent and Trademark Office ("PTO") deserves deference as to protectability, the grant in this case occurred in 1936 when WISPRIDE cheese was actually made in Wisconsin. Thus, the PTO had no opportunity to consider the issues in this case. This is in line with the proposition that registration establishes a presumption only for matters at issue in the registration proceedings. See, e.g., *Miller Brewing Co. v. G. Heileman Brewing Co., Inc.*, 561 F.2d 75, 79 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978); *Jean Paton, Inc. v. Jacqueline Cochran, Inc.*, 201 F. Supp. 861, 864-65 (S.D. N.Y. 1962); *Avon Shoe Co. v. David Crystal, Inc.*, 171 F. Supp. 293, 298 (S.D. N.Y. 1959).

Likewise, there is no support for reading Bel Cheese's argument more broadly for the proposition that registration prima facie immunizes marks from attack on all grounds. Section 7(b)'s presumptions do not reach so far as Bel Cheese urges. Obviously, it is not registration, ownership, nor right of exclusive use that are at issue in this case. Nor is it "validity" in the sense of the statute. Statutory validity relates to the establishment of a presumption only as to the enumerated facts, e.g. status of the mark as either not

generic or descriptive without secondary meaning, *Door Systems, Inc. v. Pro-Line Door Systems, Inc.*, 83 F.3d 169, 172 (7th Cir. 1996); use as of filing date, *Zazu Designs v. L'Oreal, S.A.*, 979 F.2d 499, 504 (7th Cir. 1992); right to exclusive use with regard to certain goods, *Miller Brewing Co. v. G. Heileman Brewing Co., Inc.*, 561 F.2d 75, 79 (7th Cir. 1977). One commentator summarized the case law as indicating that registration is prima facie evidence of these matters: continual use of the mark from the date of filing; lack of confusing similarity to other registered marks; non-descriptiveness or acquisition of secondary meaning; use in interstate commerce; and a name that is not generic. McCarthy on Trademarks § 32.43[3][a].

Thus, no case law indicates there is a presumption that the mark does not misrepresent the source of the goods. Instead, § 33(a), which tracks § 7(b), explicitly allows a party to prove defects in a registered mark based upon the grounds in § 33(b), including a mark's use "so as to misrepresent the source of the goods...." 15 U.S.C. § 1115(b)(3). As this is the basis of the claims in this action, the presumption of validity extended by registration has no role.

Even assuming there were presumptions relevant to § 43(a) claims or § 14(3) cancellation proceedings, presumptions created

by registration are rebuttable. *Door Systems*, 83 F.3d at 172. While Wisconsin has not specifically alleged it can rebut any presumption as to origin, it is a fair inference from the complaint's allegations that it can do so.

In sum, Wisconsin has stated a claim for which it may be granted relief, and Bel Cheese's Rule 12(b)(6) motion to dismiss must be denied.

C. Rule 12(b)(1) Motion: Lack of Standing

The court understands Bel Cheese to attack only Wisconsin's standing under the Lanham Act to press its claims. "Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). While Bel Cheese could conceivably challenge the statutory standing grant as exceeding Article III's "outer limit to the power of Congress to confer rights of action," Bel Cheese has made no such argument. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring).

In ruling on a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the court accepts the complaint's material allegations as true, construes the complaint in plaintiff's favor, and draws from it all reasonable inferences that tend to establish

jurisdiction. *Id.* at 501; *Capitol Leasing Co. v. F.D.I.C.*, 999 F.2d 188, 191 (7th Cir. 1993). Where subject matter jurisdiction is challenged for lack of standing, plaintiff must establish that it satisfies the standing requirements. *Retired Chicago Police Ass'n v. City of Chicago*, 76 F.3d 856, 862 (7th Cir. 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Where the facts allegedly establishing standing are challenged, plaintiff must support its allegations with "competent proof," which requires "a showing by a preponderance of the evidence, or proof to a reasonable probability, that standing exists." *Id.*

1. § 43 and § 14(3) Cancellation

The standing requirements under Section 43(a) and Section 14(3) are worded similarly and interpreted similarly. Section 43(a) allows "a civil action by any person who believes that he or she is or is likely to be damaged by" an act prohibited in the section. 15 U.S.C. § 1125. Section 14 confers standing to file a cancellation petition upon "any person who believes that he is or will be damaged by the registration of a mark on the principal register...." 15 U.S.C. § 1064. The focus in both standing provisions is upon plaintiff being "damaged."

Section 43(a)(2) states that "'any person' includes any State, instrumentality of a State or employee of a State or instrumentality

of a State acting in his or her official capacity." By contrast, section 14 does not explicitly define "any person" to include states.

As to section 43(a), the only Seventh Circuit case law this court located on the topic is *Dovenmuehle v. Gilldorn Mortg. Midwest Corp.*, 871 F.2d 697 (7th Cir. 1989).² In that case, contrary to defendants' claim, the court of appeals did not adopt any formulation of a test for standing. The court first recognized that "[t]ypically, plaintiffs suing under § 43(a) are business competitors claiming to be injured as a result of false advertising." *Id.* at 699. The court went on to state that "[t]he question of how broadly the Lanham Act extends beyond business competitors, however, is somewhat uncertain." *Id.*

The court acknowledged some agreement among the circuits that standing was broad and conferred upon any party having a reasonable interest to be protected against violations of the Lanham Act. *Id.* at 700. However, the court recognized criticism of the Second Circuit's limitation of standing to "members of a purely commercial class." *Id.* (citation and internal quotation omitted). The Seventh Circuit did not take a position in this debate, however, as it found that plaintiffs had no reasonable interest

²While the court in its decision cited § 43(a) as it existed before the 1988 amendments, I do not believe the older language controlled its decision. After all, both the old and current versions confer standing upon "any person who believes that he is or is likely to be damaged" by a violation of the section.

deserving protection under either the Second Circuit approach or "a more expansive approach." *Id.*

If Wisconsin cannot have standing as a member of a purely commercial class, then this court must confront whether § 43(a) can confer standing upon a non-member of that class. However, as standing under § 43(a) is broad, Wisconsin's activities with respect to its cheese industry can be regarded as "commercial." Here, the state has manifested a strong interest in its cheese industry and the value of a Wisconsin origin through establishing regulatory and promotional programs. Moreover, Wisconsin has alleged that it receives significant tax revenues from the state cheese industry. The combination of active involvement in the cheese industry and an economic interest via tax revenues should qualify as a "commercial activity" for purposes of standing under § 43(a).

Even if this conclusion is incorrect, the better view of § 43(a) standing is that the class afforded standing should be broader than a "purely commercial class." The Seventh Circuit has never explicitly adopted the "purely commercial" limitation. The strongest argument for an expansive standing grant is that one purpose of § 43(a) is protect consumers. In passing the Lanham Act, Congress intended "to protect the public from imposition by the use of ... false trade descriptions." U.S.S.C.A.N., 79th Cong., 2d Sess. 1275 (1946);

Report of the Senate Committee on Patents, S.R. 1333, May 14, 1946. As one commentator put it, "§ 43(a) is designed to protect the right of the consumer to be told the truth." McCarthy on Trademarks § 27.04[1][b]. This intent counsels that courts should allow vindication of consumer interests by some parties who are not involved in narrowly defined commercial activities.

To the degree that *Dovenmuehle* allows standing for more than "a purely commercial class," this case exemplifies why such an expansion should be made. Accepting the complaint's allegations as true, there is a clear and significant link between Wisconsin and the state cheese industry; the state has demonstrated and acted upon its interest in fostering a strong "brand" name, whose hallmark is quality. Moreover, Wisconsin is no economic bystander in this enterprise. The state's coffers depend significantly on the health of its cheese industry. Thus, Wisconsin's standing can be founded upon its reasonable interest to be protected against use of the WISPRIDE mark that would violate § 43(a).

Given the similarity between sections 14 and 43's standing requirements, most of the above arguments apply equally to both sections. The fact that one section explicitly recognizes that States may bring actions while the other does not is not conclusive. Neither does § 14 exclude States from bringing cancellation

actions. It is more relevant that the grounds on which cancellation is sought are similar to those in § 43(a)(1)(B), so that the same purpose of protecting the public interest supports a broad view of standing under § 14(3). More critically, Wisconsin in this case satisfies the explicit restriction that it be damaged by the violations of the Lanham Act. The case law cited in one commentary repeats the refrain that § 14 standing requirement is intended to separate "meddlesome parties" from those with "a personal interest in the outcome beyond that of the general public." *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1027, 1028 (1982); see generally, McCarthy on Trademarks § 20.13[1][a]. In one such case, a federal agency was held to have standing to seek cancellation where the agency had an interest in using the mark in submitting competitive bids. *Department of Transportation, Federal Aviation Administration v. Scanwell Laboratories, Inc.*, 170 U.S.P.Q. 174, 176 (T.T.A.B. 1971). Wisconsin, also a governmental unit, would appear to have a more significant interest than the agency in *Department of Transportation*. Under this broad view of standing, Wisconsin has a sufficient interest, through its dairy industry programs and its tax base, to seek cancellation under § 14(3).

D. Rule 12(b)(3) Motion: Improper Venue

Venue in this action is alleged to lie in the Eastern District of Wisconsin under 28 U.S.C. § 1391(b)(2), which provides:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ... a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated....

In contrast to Bel Cheese's position,³ the current, and governing, version of the statute does not contemplate that there is only one district in which a claim can arise.

Under this law, resolution of the motion is straightforward. In no sense did these claims arise solely in New Jersey or Kentucky. Wisconsin's investments in its cheese industry allegedly have imparted "brand" recognition and a reputation for quality to Wisconsin cheese. WISPRIDE cheese is allegedly getting a free ride on these investments. Moreover, owners of the mark allegedly traded on a Wisconsin identity for the nearly 60 years that WISPRIDE cheese was made in the state. These events gave WISPRIDE cheese an association with Wisconsin. Moreover, the

³The court assumes that Bel Cheese relies upon the pre-1990 version of section 1391(b). The quoted section allows an action such as this to "be brought only in *the* judicial district where all defendants reside, or *in which the claim arose*, except as otherwise provided by law." Defendant's Brief In Support of Motion to Dismiss at 21 (emphasis added).

WISPRIDE mark alone allegedly is a designation of geographic origin in Wisconsin. These facts, in combination with the relocation of WISPRIDE cheese manufacture from Wisconsin to Kentucky, give rise to the claims. Thus, "a substantial part of the events or omissions giving rise to the claim occurred" in the Eastern District of Wisconsin. Venue is proper here. Accordingly,

IT IS ORDERED that defendant's motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(1), and 12(b)(3) be and the same is hereby **DENIED**.

The clerk of court is directed to return the file in this matter to the Magistrate Judge for further pretrial processing.

Dated at Milwaukee, Wisconsin this ^{85th} day of July, 1996.

BY THE COURT:



J. P. Stadtmueller
Chief Judge



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Robert W. Larsen
Assistant Attorney General
608/266-3076
FAX 608/267-2223
TTY 608/267-8902

July 29, 1996

James Haney
Department of Justice
114 East, State Capitol
Madison, WI 53702

Stewart Simonson
Legal Counsel, Governor's Office
115 East, State Capitol
Madison, WI 53702

Terry Grosenheider
Department of Development
123 West Washington
Madison, WI 53703

The Honorable Alvin Ott
State Representative
318 North, State Capitol
Madison, Wisconsin 53702

Re: WISPRIDE case

Dear Gentlemen:

Enclosed is a favorable decision by J. P. Stadtmueller, federal district judge, in our action against Fromageries Bel, Inc.

The court ruled that the State of Wisconsin does have standing and does state legal claims against Fromageries Bel on both alleged causes of action - (1) that the use of the WISPRIDE label by Fromageries Bel for cheese made in Kentucky is false advertising and (2) false designation of origin is grounds for cancellation of the trademark held by Fromageries Bel for the WISPRIDE mark. The court also rules that the Eastern District for Wisconsin is a proper place of venue and the case may proceed there.

Given the consumer protection aspects of this case, I suggest that an effort be made to provide information to the public regarding the active status of this litigation, especially in major east coast markets and outlets. Let me know if you need more from me (266-3076).

Sincerely,

Robert W. Larsen
Assistant Attorney General

RWL:mw

Enclosure

cor\wispride.mem

FAX TRANSMITTAL MEMO

**State of Wisconsin
Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
FAX 608/267-2223**

To: Representative Alvin Ott	Date: December 16, 1996
	Fax Number: (608) 267-4358
From: Robert W. Larsen Assistant Attorney General Department of Justice	No. of pages including cover sheet 5
	Sender's phone number: (608) 266-3076

Comments:

Per the attached, Bel Cheese will announce this afternoon that it plans to resume production of WISPRIDE cheese in Wisconsin. Joining with attorney Collen's request, I would urge you to not issue press releases regarding the impact of this announcement on the pending lawsuit against Fromageries Bel, until after we have had an opportunity to meet and discuss it. I am available to meet December 18 to 20th. Please call me to provide a time when you or your representative can meet.

3pm - Wed, Dec 18th

Al's office

Bob Larsen + Stu Simonson

Call

Dec-16-96 02:32P M&I - N.Y.

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P.01

MC GLEW AND TUTTLEA PARTNERSHIP OF PROFESSIONAL CORPORATIONS
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SCARBOROUGH, NEW YORK 10510-0806
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THE WOOLWORTH BUILDING
LAURENCE G. DENGLER J.D., OF COUNSEL
233 BROADWAY
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FACSIMILE: (914) 941-5855

REPLY TO: SCARBOROUGH OFFICE

December 16, 1996

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**VIA FACSIMILE AND MAIL
TRANSMISSION LENGTH: 4 PAGES**

Robert W. Larsen, Esq.
Assistant Attorney General
Wisconsin Department of Justice
Box 7857
Madison, Wisconsin 53707-7857

Re: Hon. Tommy G. Thompson, Governor, State of
Wisconsin v. Fromageries Bel Inc. (now known as Bel
Cheese USA, Inc.)
Case No. : 95-C-1156
Our Ref. : T-40220

Dear Mr. Larsen:

This follows our discussion of November 22, 1996 regarding potential settlement of this lawsuit. Later this afternoon, Bel Cheese will announce that it is in the process of consolidating and reallocating its cheese production among the facilities in Kentucky, where WISPRIDE is currently manufactured, and the KAUKAUNA plant in Little Chute, Wisconsin. With this fax I attach a confidential advance copy of the statement to employees related to this event. I am also providing an advance copy of the company's public announcement, scheduled for release later today.

We would like to discuss the impact, if any, of BEL's current business plan upon the current litigation.

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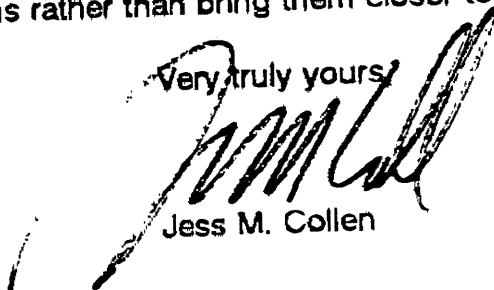
Robert W. Larsen, Esq.

Page 2

December 16, 1996

The attached announcements are not being made until later this afternoon; consequently, I would ask that you make no public discussion or disclosure of this information until after this information has been released by BEL. Moreover, given the state's pursuit of publicity in this case, let me suggest that any settlement discussions may be pursued more effectively if both parties refrain from issuing battling press releases. Soliciting publicity will serve to continue to lock both sides into more intractable positions rather than bring them closer to any agreement.

Very truly yours,



Jess M. Collen

JMC:afd:aak

T40220L212

Enclosures: Announcements

FOR IMMEDIATE RELEASE**CONTACT: Rob Bratskeir
Bratskeir & Co.
(212) 679-2233****BEL CHEESE USA, INC. TO EXPAND PRODUCTION
IN LITTLE CHUTE, WI TO INCLUDE WISPRIDE® PRODUCTS**

FORT LEE, NJ, December 16 -- Bel Cheese USA, Inc. announced today that it will begin production of most Wispride® brand refrigerated cheese spreads in its Little Chute, WI plant starting March, 1997.

The company acquired the facility that will produce Wispride when it purchased Kaukauna Cheese from the Kaukauna Cheese Wisconsin Limited Partnership earlier this year. The company plans to add the equivalent of approximately 40 positions to its Little Chute staff. The plant will continue to manufacture refrigerated cheese spreads and Mexican sauces and condiments under the Kaukauna Cheese® brand name.

Wispride products are presently manufactured at the company's Leitchfield, KY plant. The shift follows a six-month cost study of its production facilities in Little Chute and Leitchfield, triggered by Bel's acquisition of Kaukauna Cheese. Bel will cease most of its production of Wispride in Leitchfield. That plant will also continue to manufacture the company's The Laughing Cow®, Cheez Bits®, Bonbel®, Babybel® and Price's® products. The company is studying a plan to add a new production line in Leitchfield for export products in late 1997.

Wispride and Kaukauna are the nation's leading brands of cold-pack and refrigerated cheese spreads. The company's other brands include The Laughing Cow, Babybel, Cheez Bits, Bonbel and Price's pimiento spread in addition to its refrigerated cheese products and Mexican sauces and condiments sold under the Kaukauna brand name.

Bel Cheese USA, Inc. is a subsidiary of Paris-based Fromageries Bel, one of the world's leading manufacturers and marketers of branded cheeses. The company's 1995 sales totaled \$1.6 billion.

* * *

Dec-16-96 02:32P M&I - N.Y.

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P. 04



Cheese USA Inc

602 West Main Street - P. O. Box 607 - Leitchfield, Kentucky 42754 - Telephone 502.259.4071 - Fax 502.259.4560

December 16, 1996

ref: 3044

To: All Leitchfield Employees

subject: WISPRIDE Production Transfer

I have some important news which is difficult for me to convey.

The study which I mentioned to you earlier and triggered by the Kaukauna acquisition has been completed. This study confirmed that the consolidation of all Bel Cheese USA cold pack production at a single larger plant would lower costs and increase value for our customers.

Therefore, on February 28, 1997, the production of nearly all WISPRIDE products at Leitchfield will be discontinued. WISPRIDE production will be transferred to Bel's Kaukauna plant which is larger and which specializes in cold pack refrigerated spreads.

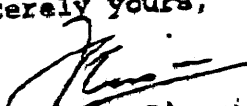
The effect of this move will be a major realignment of employees here, involving nearly all departments. Up to 67 full-time employees will be permanently laid off. Some long term employees who had previously transferred to WISPRIDE production jobs will be offered jobs in other departments, although these jobs will not necessarily be the same position and pay rate.

Our goal is to make the process of layoffs and job realignment as fair and as objective as possible. Therefore, layoff decisions will be based on seniority, previous Bel job experience and training. Each employee affected by layoffs will be notified individually tomorrow.

Longer term, Bel Cheese USA, Inc. plans to install a new production line for export product in the space vacated by the transfer of WISPRIDE production. However, for technical reasons, this installation will not begin until the end of 1997.

Bel Cheese USA, Inc. regrets the disruption and the loss of employment which this difficult but necessary economic decision will create. The work ethic and the quality of employees here have been excellent.

Sincerely yours,


Jean Pierre Plessis
Vice-President Manufacturing

W. Iversen James S. Michael 12/11/96

Cheesemaker to shift Wispride work to state

By RICK ROWELL
of the Journal Sentinel staff

A company being sued by state Attorney General James E. Doyle for selling Kentucky-made cheese spread under the "Wispride" brand said this week it would move most of that production to Wisconsin.

Bel Cheese USA Inc., a subsidiary of French cheese giant Fromageries Bel, said it would shift most of its Wispride production to its Little Chute plant beginning in March.

The company plans to add the equivalent of about 40 jobs at the plant, which now employs up to

350 people at its seasonal peak.

The lawsuit — now pending in federal court in Milwaukee — had nothing to do with the decision, a Bel Cheese spokesman said Tuesday. Rather, he said, the plan to shift production stems from a study of costs at the company's plants in Little Chute and Leitchfield, Ky., where Wispride cheese spreads are now made.

Doyle sued Fromageries Bel a year ago, alleging that the company's use of the Wispride trademark constituted false advertising. Doyle said at the time that market research had shown that people who bought Wis-

pride products believed they were buying Wisconsin cheese.

The Wispride trademark originated in 1937 with the Calumet Cheese Co., of Hilbert. In 1976, Calumet Cheese was acquired by the Nestle Co. and became its Wispride division. Fromageries Bel bought the division in 1985.

In early 1995, the French firm announced it would close the Hilbert plant and move production to Kentucky. More than 120 people lost their jobs. Doyle sued the following November.

A few months later, in February 1996, Fromageries Bel announced it was buying Kaukauna

na Cheese, a \$50 million food processor based in Little Chute. That plant now will become the site of most of the Wispride production. It also will continue to turn out cheese spreads and Mexican sauces and condiments under the Kaukauna Cheese brand name.

Doyle spokesman James M. Haney said the attorney general believed it was good news if jobs were returning to Wisconsin, but that the issues raised in the lawsuit remained. He noted that the announcement by the Fromageries Bel subsidiary spoke of moving most, not all, of the Wispride production to Little Chute.

Hoffa wants investigation of Teamsters election

Challenger questions discrepancy between postal total, vote count

By KEVIN GALVIN
Associated Press

Washington — Questioning the integrity of a vote he appears to have lost, James P. Hoffa

"The custody of the ballots and the vote count and election process can no longer be entrusted to Ms. Quindel," Szymanski wrote to Karen B. Konigsberg, an assistant U.S. attorney in New York. "The FBI must be directed to commence an immediate investigation."

Quindel's office reserved comment until officials there had reviewed the letter. But Mich-

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PRONET, IT'S ACD

Use of the Wispride label weighs heavy on some minds

■ The state plans to take legal action if Fromageries Bel uses the trademark on Kentucky products

By Betty Schilling
Post-Crescent correspondent

HILBERT — Fromageries Bel's apparent plans to use the "Wispride" trademark on cheese it will make in Kentucky is not sitting well with the State of Wisconsin or the Village of Hilbert.

Fromageries Bel is planning to cease operations at its cheese plant here. It will move its operations to Kentucky where it plans to use the Wispride mark on products made there, according to Robert N. Trunzo, secretary of the state Department of Development. Trunzo said the Wispride trademark is very

popular and profitable.

The Hilbert Village Board said the Wispride name has been a symbol for many years for Wisconsin pride in making cheese and moving its use to Kentucky is very alarming.

Gov. Tommy Thompson and Trunzo have informed Fromageries Bel Inc. that they will pursue legal remedies to halt the use of the Wispride trademark.

Thompson said, "I do not contest ownership rights to this trademark. I believe continued use of this trademark for cheese that will be produced in Kentucky is deceptive. Wisconsin is one of the leading dairy states in the nation and consumers throughout the country associate cheese, particularly with a Wispride label, with Wisconsin."

If Fromageries Bel uses the trademark, Trunzo said he will ask the attorney general and the Wisconsin Milk Marketing Board to implement their independent strategies

to halt use of the trademark.

Atty. Gen. James E. Doyle said the first trademark registration appears to be the original registration of the Wispride mark by the Wisconsin Cheese Publicity Association Inc. of Kiel on Nov. 16, 1937. The mark was renewed in 1957 and in 1977. Renewal was in the name of the Calumet Cheese Co. Inc. of Hilbert.

Doyle said it was his understanding that Fromageries Bel acquired the company and the Wispride mark about eight or nine years ago, subsequent to the last renewal. The mark will be up for renewal in 1997.

Doyle said that since Fromageries Bel is the owner of record of the

mark at this time, another company can not use the mark at this time.

But the registration of the mark is subject to cancellation, said Doyle, and, upon cancellation, the mark would be available for use by a qualified company.

The federal trademark law provides that a petition to cancel registration of a mark may be made at any time "if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used."

"There is no question in my mind that the use of the mark Wispride in connection with cheese products

represents that the cheese comes from Wisconsin. It follows that to use the mark in connection with cheese products which do not come from Wisconsin would constitute misrepresentation as to the source," he said.

Whatever the isolated import of the word Wispride, the owner of the mark has in fact sought to establish a strong association with Wisconsin as the source of the products bearing its labels. Just in case some consumer in the past might miss the intended connotation of the mark, the labels proudly proclaim not only Wispride but also "The Pride of Wisconsin." Furthermore one of the labels incorporates a graphic representation of Wisconsin. As part of the larger law of unfair competition, the trademark law is to prevent confusion, fraud or misrepresentation about the origin of goods.

The trademark office will refuse

to register marks that are deceptive and particularly those that are primarily geographically deceptive.

"Clearly this has been no problem during the prior history of the mark since the product has come from a Wisconsin-based company am confident that a Kentucky cheesemaker could not register the mark Wispride afresh today and follows that the attempted relocation of a proper mark from Wisconsin to any other state constitutes strong grounds for cancellation of the mark," Doyle said.

Company trademark counsel, Jess M. Colien said the Wispride mark is a coined mark. Descriptive terms are those terms which designate a particular characteristic of a product, such as tasty, mild or even Wisconsin as applied to cheese products, he said. Wispride is not a descriptive term, said Colien.



Trunzo



Doyle

Wispride is back in state

From B-1

"I would like to see it back in Hilbert," Ott said. "But I'm extremely pleased that the attorney general filed the suit to pursue the label. He did a good job."

Ott and others contended it was not proper to have dairy products made and packaged elsewhere to imply that they have a connection with Wisconsin because of the Wispride label.

The Wispride label dates to before World War II, when the Wisconsin State Cheesemakers Association used it as part of a stamp to identify cheese made by its members. As interest in the stamp and label waned, the Wispride name was sold to Armin Hernke's family cheese plant at Hilbert. Hernke Cheese used the copyrighted Wispride label on its products until that portion of its operations were sold to Fromageries Bel.

In an announcement from its Fort Lee, N.J., office, Bel Cheese USA said its decision to return the Wispride production to Wisconsin was based on a six month study of costs at its facilities in Leitchfield and Little Chute. The study was triggered by Bel's acquisition of Kaukauna Cheese, which produces Mexican sauces and condiments in addition to the refrigerated cheese spreads.

Bel Cheese USA will continue to make other lines of its products at Leitchfield and plans to bring production of a new line of products for export in late 1997. The company had sales of \$1.6 billion in 1995.

For Wisconsin, it was a matter of the state's pride

■ The Wispride label will be produced locally again beginning in March

By Ray Mueller

Post-Crescent correspondent

LITTLE CHUTE — The announced return of the "Wispride" brand label to Wisconsin for production of a majority of the refrigerated cheese spreads carrying that label is being greeted as a bittersweet situation by the chairman of the state Assembly Agriculture Committee, who had gotten state officials to sue for a return of the label to the state.

"Basically, we won on the suit as Fromageries Bel cried 'uncle,'" said Al Ott, R-Forest Junction, in wake of the recent announcement that, starting in March, production of Wispride brands will be shifted from a plant at Leitchfield, Ky. Two years ago, Bel Cheese USA, a subsidiary of Fromageries Bel, based in Paris, closed its Hilbert plant and moved production of Wispride to Kentucky.

That move angered Ott and other dairy officials, leading to a suit filed against Fromageries Bel by Wisconsin Atty. Gen. James Doyle.

The suit was brought in federal district court over a year ago but it has not been settled on the merits. Early in 1996, however, Bel Cheese USA bought the Kaukauna Cheese plant here from Kaukauna Cheese Wisconsin Limited Partnership.

As the company expects to add about 40 positions to make the Wispride product line at the Kaukauna Cheese plant, Ott says he is pleased to have the majority of production under the label return to the area (Little Chute and Hilbert are about 15 miles apart) "but not happy for the employees and economic strife" left behind by the closing of the Hilbert plant, which stands idle today.

Please see **WISPRIDE, B-3**



AL OTT

Fromageries Bel to sell Hilbert facility

Chilton Times 4-27-95

The Village of Hilbert received a letter from Fromageries Bel, Inc., New Jersey, stating they plan on offering their Hilbert facility for sale.

In response to a letter from the Village of Hilbert, Fromageries Bel, Inc., Corporate Controller C. Luke Orton said the company will be glad to accept the Hilbert Village Board's assistance in marketing of the Fromageries Bel, Inc. buildings in Hilbert.

Orton stated they will be taking the necessary steps to prepare a formal analysis of the facilities to be offered for sale.

The company, Orton said, anticipates the analysis to be completed at the end of April.

At that time, Orton emphasized, they will contact the Hilbert Village Board to provide a contact for coordinating the village's marketing efforts with those of the company.

Fromageries Bel, Inc. recently ceased their operations at Hilbert and moved them to Kentucky.

MONEY MATTERS

editor

t.net

Bel Fromageries moving headquarters to Little Chute

■ **Bob Gilbert, the new U.S. operations president, says the consolidation to Little Chute will add about a dozen administrative jobs**

By Arlen Boardman
Post-Crescent business editor

LITTLE CHUTE - Kaukauna Cheese, acquired a year ago by French-based Fromageries Bel, has been designated the headquarters for all of Framageries' U.S. operations and will increase its administrative employment next month, Robert Gilbert said Monday.

Gilbert, now-president of the

U.S. operations, said the consolidation is a streamlining effort and will mean that four to six managers and a half-dozen clerical employees will be added to the workforce here.

"This decision will make us more competitive and Bel/Kaukauna USA (the new U.S. operations name) will be a stronger force in a very competitive category," he said.

The consolidation includes the closing of the Fort Lee, N.J., office which had been the Bel Cheese USA headquarters. The Frenchman who was president there is returning to France.

This move comes on the heels of a December decision to move

the Wispride product brand back from the Leitchfield, Ky., plant to Little Chute. That decision is to be effected in March, too, and will bring 40 production jobs to Little Chute.

Gilbert, who led the management ownership group that sold Kaukauna Cheese to Bel a year ago, said he will run the Kentucky and Little Chute operations. A New York area sales office will market the Kentucky plants remaining products.

"It bodes well for Little Chute, and I think it also bodes well for Wisconsin and our reputation as America's dairy land," he said.

He said the moves are Bel's way of strengthening its U.S. opera-

tions.

"I would say that the latest round of decisions solidifies our position for the future," Gilbert said. "And shows that Framagerie Bel is fully committed to its operations in the United States, as well as to the development of the Bel Cheese France."

Fromageries Bel is a multinational manufacturer and marketer of cheese products.

The consolidation move eliminates 29 jobs in Fort Lee and merges the marketing for the Kaukauna and Wispride brands with the marketing staff in Little Chute.

Before the consolidations Bel/Kaukauna had about 350 employ-

ees during its fall peak period and about 120 year-around employees.

Gilbert said the Wispride move will increase Bel/Kaukauna's poundage volume by about 25% this year. It grew 5% last year with internal growth, which Gilbert said was double the industry's average.

Bel/Kaukauna has expansion plans that include more production capacity in 1998 to handle the Wispride products and more office space next year, too.

The local Bel/Kaukauna products include refrigerated cheese spreads and Mexican-style cheese products. The Kentucky plant's remaining products include pimento spreads, rolled natural cheeses and a line of cheese wedges.

Fromagerie Bel lawsuit

- Jerry Shosenheimer

Ed Marion - Murphy + Desmond

257-7181

* AG's office has put a lawsuit together - don't know when will be filing - AG's office waiting on Administration + Marion + DOD to review complaint - he thinks we are real close to filing - doesn't foresee not filing.

AG's office - Bob Jansen

Saying Wisconsin has no legal claim ~~bring~~ suit against From Bel for their use of WISPRIDE label
The Case

Initial Hurdle -> Motion to Dismiss and change of Venue -> other than Wisconsin

Summary Judgement?

Next Friday -> setting up Time Frame for Pre-trial schedule a ^{tentative} date for trial

- ① Motions -> Say WI has no legal ~~claim~~ claim to bring suit against From Bel for their use of WISPRIDE label
 - ② Change of Venue - outside WI
- Both Denied

DON FURNISS

Chris Spengler
Prosser
Adopt committee

Aug. 20
6-8

414-993-1996

PROJECT OBJECTIVES

PRIMARY

1. Establish a company on a sound financial basis for growth to manufacture and market quality cheese products.

STEPS:

- a. Establish support of investors.
- b. Purchase manufacturing facility (Hernke Plant).

SECONDARY

1. Compete for those portions of the Wispride business that become available.

STATUS UP-DATE

1. Need to hire new broker for New England market.
2. Kaukauna hires our New York region manager.
3. Hilbert employees continue to resign. (16 since July 1st) - Wasn't supposed to happen - Bel increases stay-on bonuses by dept
4. Kaukauna places advertisement in Hilbert newspaper to hire "Seasonal Employees".
5. Hilbert clean-up crew demands a \$10,000 stay-on-bonus.
6. Bel management agrees to sell plant management plant once trademark issue is resolved.
7. P. DuFort acknowledges that Bel couldn't use Wispride trademark if situation occurred in France.
8. Unemployment rate in Kentucky falls to 6.7%. Grayson County (Leitchfield) rate falls to 4.6%.

* Kaukauna Club has been #1 competitor for long time
- Making big hits on Bel ~ getting into Eastern market, aggressive
- looked at plant simply to see what info they good gather