



Department
for Environment
Food & Rural Affairs

helpline@defra.gsi.gov.uk
www.defra.gov.uk

Protected Food Names

Defra

SW Area

2nd Floor

Seacole Building

2 Marsham Street

London

SW1P 4DF

Date: 28/11/2018

By email only

To: The Devon Cidermakers Guild c/o Mr J Mcilwraith

**APPLICATION TO PROTECT THE NAME “DEVON CIDER” AS A PROTECTED
GEOGRAPHICAL INDICATION: DECISION LETTER**

I am writing further to the application submitted by the Devon Cidermakers Guild to register “Devon Cider” as a Protected Designation of Origin (PDO) under the EU Protected Food Name scheme.

Following the formal application and consultation process, overseen by the Department for Environment Food and Rural Affairs (‘Defra’) as Competent Authority for the scheme in the UK, we have now carefully considered all the information relevant to the application.

After careful consideration it has been concluded that the applicant group have not sufficiently established that the quality or characteristics of the product are essentially or exclusively due to the particular geographical environment of Devon, as is required under Articles 5(1)(b) and 7(1)(f)(i). As such the application does not satisfy the requirements of Regulation 1151/2012 and it is not appropriate to forward the application to the commission. The annex to this letter explains our assessment of the application, the objections made at consultation and the evidence you have provided since.

The notice of this decision will be published on our website on at:

<http://www.defra.gov.uk/food-farm/food/protected-names/>

If you disagree with this decision you may submit an appeal against this decision to Defra within 10 working days from the date of publication of the decision on our website. Appeals should be emailed to protectedfoodnames@defra.gsi.gov.uk

Appeals will be considered by an appropriate official not directly involved in the original application. They will consider any new information provided before confirming or amending the decision.

I understand that this decision will be a disappointment to you. I would like to thank you for your interest in the Protected Food Name scheme and the support you have given Defra staff whilst undertaking our role of appraising your application.

Yours sincerely,

Chris Blake

Defra | Agri-Food Chain Directorate

Annex - Defra assessment of the application to register “Devon Cider” as a PDO

Application criteria in the regulation

The application

The application to register the name “Devon Cider” as a PDO is made by the Devon Cidermakers Guild.

Relevant legislation

Regulation 1151/2012 makes provision for applications for registration of Protected Designations of Origin (PDO). Defra, as the competent authority for the UK Protected Food Names Scheme, must decide whether the application meets the requirements of Regulation 1151/2012 and if so forward it to the Commission for a final decision. (Article 49(4)).

In scrutinising the application, Defra must:

- i. Consider whether the application is justified and meets the conditions of Regulation 1151/2012 (Article 49(2)); and
- ii. Carry out a national objection procedure (Article 49(3)).

In order to meet the requirements of 1151/2012 for an application for a PDO, the application must meet the requirements of both Articles 5(1) and 7(1). Our analysis and decision is based on expert evaluation of the application, our own investigations and all the documentation provided by the applicant group including the evidence linked within those documents. Inadmissible objections have not been considered as part of the decision process.

Appraisal of the product specification against the EU Regulation 1151/2012 requirements for Protected Designations of Origin

Article 5(1)

For the purpose of this Regulation, ‘designation of origin’ is a name which identifies a product:

- (a) originating in a specific, region or, in exceptional cases, a country;
- (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;

(c) the production steps of which all take place in the defined geographical area.

We consider that the application meets the requirements set out in Article 5(1)(a) and 5(1)(c), however, we do not consider that the application meets the requirements of Article 5(1)(b) for the following reasons:

The applicant group have stated that *'the terroir in Devon gives a unique character to the ciders of Devon. Ciders made from local apples being softer and sweeter than those ciders made in surrounding areas'* whilst the *'soil, climate and native microflora of Devon means that any variety of apple grown in Devon will be noticeably distinct from the apples grown in other areas even those of the same variety'*.

Devon is a geologically diverse county with a wide range of rock types (Chalk, Devonian limestones, red sandstones, granites, Culm Measures etc.) and therefore soil types.

The soil type will also affect the flora and microflora of the orchard. Any influence of geology on the characteristics of "Devon Cider" would depend on whether the cider apples are all grown on one rock type. If they are grown across a range of rock types a link between Devon geology and the cider apples would be much harder to make.

Cider orchards are located throughout Devon with the exception of moorland areas on different rock and soil types. Any effect the geology and microflora may have on the apples will therefore depend on the location of the orchard.

In their rebuttal of May 2018 the applicant group have stated that *'Devon's location on England's South West peninsular with its maritime climate is cooler in summer and warmer in winter than more inland cider growing areas such as Herefordshire and Somerset. This temperature difference, and in particular the higher rainfall from April to September, effects the character of apples and cider produced. Of particular interest, the phenolic content of the apples are altered by climate. It is variously reported that phenolic levels are affected by cultivation techniques and water availability. This complex group of chemicals are present in quantity in cider apples and are the responsible for the depth of character of cider made from them compared to dessert fruit and hence their names bittersweet and bittersharp apples'*.

Research has shown that the concentration of phenolic content in the same variety of cider apple can vary slightly dependent on cultivation and processing conditions however there is no significant differences between the same apple varieties grown in different regional environments. The overwhelming determinate for the concentration of phenolic content is the variety of apple rather than environmental factors.

Whilst it is clear that phenolic compounds are responsible for the depth of character of cider in general, there is no substantiated evidence that the composition and concentration of these compounds in specific apple varieties are altered noticeably by terroir.

The applicant group have described how *'in Devon, due to its higher rainfall, Canker is more prevalent and varieties with resistance chosen accordingly. The varieties of cider apples chosen by orchard planters in Devon therefore influences the character and flavour of the cider made in Devon'*. Whilst canker is prevalent throughout the whole of the UK, orchards in Devon and the South West of England may be prone to infection due to the prevailing climate of mild, warm winters and wet summers. However many other factors such as variety, age, soil type, root stock, pruning and fertilizer regimes affect the trees' susceptibility to canker. While there are a few traditional varieties of cider apples which have a slight resistance to canker such as 'Dabinett' and 'Harry Masters', on the other hand 'Browns apple' is more susceptible. All three of these apple varieties are commonly used in Devon to make cider along with other varieties. The commercial orchards mainly contain the same varieties as in Herefordshire. These varieties/rootstock combination are not particularly susceptible to canker if the trees have been grown from healthy stock. It is therefore likely that orchard planters both inside and outside Devon take a range of factors into account when making their choice. It therefore cannot be said that it is the Devon climate which is essentially or exclusively responsible for the choice of apple variety and hence the taste of "Devon Cider".

Cider orchards are located throughout Devon (with the exception of moorland areas) on different rock and soil types with varying rainfall levels. With such a diverse array of growing conditions and only a slight climatic influence on phenolic compounds it cannot be concluded that the terroir of Devon has imparted unique characteristics to "Devon Cider" or any variety of apples grown within Devon compared to those grown outside the county. A Professor of Plant Science at Cranfield University who critiqued the application concluded: *"There is no scientific evidence that Devon's 'terroir' makes Devonian apples 'noticeably distinct from the apples grown in other counties, even those of the same variety'".*

The remainder of the link section provides a background history of the tradition of cider making in Devon. It does not show that the techniques and know-how of local cider makers are inherent to Devon or how they contribute to the specific and distinctive quality and characteristics of "Devon Cider".

It is considered that the applicant group have failed to sufficiently demonstrate that the quality or characteristics of "Devon Cider" are essentially or exclusively due to the particular geographical environment of Devon and therefore this application does not meet the criterion of Article 5(1)(b).

Appraisal of the product specification against the EU Regulation 1151/2012 general requirements

Article 7(1)

We consider that the application meets all of the requirements except for the requirement under Article 7(1)(f), which requires the application to provide details establishing the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1).

We consider that this requirement has not been met because the applicant group have failed to provide sufficient specific evidence to establish a link between the qualities or characteristics of the product and the geographical environment as required for a PDO.

We have concluded this because of the same reasons outlined above in consideration of Article 5(1)(b).

Conclusion

To meet the conditions of a PDO the name must not just be an indication of provenance. The characteristics of the geographical area must be responsible for the product's distinct qualities, such as taste, colour and smell. The application therefore must show an intrinsic link between the product and the natural and human factors of the geographical environment.

It is clear that the product is traditionally associated with the county of Devon and that the production, processing and preparation of the raw materials all take place in the geographical area. However, after careful consideration it has been concluded that the applicant group have not sufficiently established that the quality or characteristics of the product are essentially or exclusively due to the particular geographical environment of Devon, as is required under Articles 5(1)(b) and 7(1)(f)(i). As such the application does not satisfy the requirements of Regulation 1151/2012 and it is not appropriate to forward the application to the Commission.

Consideration of objections

The national objection procedure was carried out by Defra. A period of 12 weeks was allowed for the lodging of objections by any natural or legal person having a legitimate interest and established or resident within the UK. This objection period began on 31 May 2016 and ended on 23 August 2016.

Objections were received from four parties within that 12-week period:

At the time all of the objections were considered admissible (under the grounds shown in Article 10(1) below) and handled as such in the national objection stage of the process. The Devon Cidermakers Guild was given the opportunity to rebut the objections.

While the decision has been taken not to forward the application to the Commission, we have considered the objections further as part of the overall assessment of the application.

Article 10(1) Grounds for opposition

1. A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it:

(a) shows that the conditions referred to in Article 5 and Article 7(1) are not complied with;

(b) shows that the registration of the name proposed would be contrary to Article 6(2), (3) or (4);

(c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2); or

(d) gives details from which it can be concluded that the name for which registration is requested is a generic term.

Review of the statements of opposition including their admissibility

Objector (a) Opposition to the application to register “Devon Cider” PDO was made on the following grounds:

Article 5(1)(b) – whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.

Objector (a) opposed the suggestions by the applicant group that the terroir, climate, soil and micro flora of Devon will lead to apples tasting different to the same varieties of apple grown in other counties and ultimately to the unique character of “Devon Cider”. Objector (a) also disputes the claim that the softer character and colour of “Devon Cider” has traditionally been attributed to the red soils found around the county.

Evidence has been provided objector (a) which shows that not only are the climate and most of the soil types very similar to those of neighbouring counties but both vary considerably throughout the county of Devon itself. As such, objector (a) contends the variance in growing conditions would lead to differences in the character of the cider produced in different areas of Devon.

This objection shows that the condition in Article 5(1)(b) is not complied with, and therefore also shows that the condition in Article 7(1)(f) is not complied with, and so has been accepted as admissible.

Article 7(1)(b) - requires a description of the product, including the raw materials, if appropriate, as well as the physical, chemical, microbiological and/or organoleptic characteristics.

Objector (a) has stated that the “Devon Cider” application does not meet the conditions of Article 7(1)(b) because it is impossible to taste the difference between cider made on either side of the county borders. This objection is rejected in that there is no requirement under Article 7(1)(b) for the taste to be different to cider made elsewhere. To meet the criterion the organoleptic characteristics must be described but do not need to show that the qualities are unique.

Article 10(1)(c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2).

Objector (a) has been selling cider made in Devon for more than 5 years however as none of the brands he has cited contain a reference to Devon they would not be affected by the registration of “Devon Cider” PDO, therefore this objection is rejected.

Objector b) Opposition to the application to register “Devon Cider” PDO was made on the following grounds:

Article 5(1)(c) - the production steps of which all take place in the defined geographical area.

The objection under this article is that the production steps and techniques are common throughout cider-making counties. Therefore there is nothing Devonian about the process. The only requirement of Article 5(1)(c) is for the production steps to take place within the county of Devon. The applicant group have stated in the application that this is the case and therefore the conditions of Article 5(1)(c) have been met and the objection is rejected.

Article 7(1)(b) - requires a description of the product, including the raw materials, if appropriate, as well as the physical, chemical, microbiological and/or organoleptic characteristics.

Objector (b) has stated that the “Devon Cider” application does not meet the conditions of Article 7(1)(b) because it is impossible to taste the difference between cider made on either side of the county borders. This objection is rejected as there is no requirement under Article 7(1)(b) for the taste to be different to cider made elsewhere. To meet the criterion the organoleptic characteristics must be described but do not need to show that the qualities are unique.

Article 10(1)(d) - gives details from which it can be concluded that the name for which registration is requested is a generic term.

Objector (b) considers the name “Devon Cider” to be a generic term which does not sufficiently describe the drink the applicant group claim they are trying to protect.

To be a valid objection, the objection must give details from which it can be concluded that the name for which registration is requested is a generic term. Whilst it is recognised that there is historic use of the term “Devon Cider” (and related terms) on a range of products made in Devon under a range of conditions, processes and raw materials, this does not constitute genericity. As objector (b) has not provided sufficient details from which such a conclusion can be drawn this objection is rejected.

Article 10(1)(c) - shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2).

Objector (b) states he has been producing cider in Devon for more than five years. These brand names are partly identical to “Devon Cider” but are not made in line with the proposed specification. Therefore the registration of “Devon Cider” would jeopardise the existence of his brand names.

If the name “Devon Cider” was protected then this would have an impact on this producer who is marketing cider which does not conform to the proposed specification but is of a partly identical name. Therefore this objection is admissible.

To note: The objector has stated that the application does not meet the conditions of Article 8, however this is not an admissible grounds for opposition under Article 10(1) and therefore has not been considered.

Objector c) Opposition to the application to register “Devon Cider” PDO was made on the following ground:

Article 10(1)(c) - shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2).

Objector (c) has been making Devon Cider for over 20 years. This brand name is identical to “Devon Cider” but is not made in line with the proposed specification. Therefore the registration of “Devon Cider” would jeopardise the existence of objector (c)’s products.

If the name “Devon Cider” was protected then this would have an impact on this producer who is marketing cider which does not conform to the proposed specification but is of a partly identical name. Therefore this objection is admissible.

Objector d) Opposition to the application to register “Devon Cider” PDO was made on the following grounds:

Article 5(1)(b) - whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.

The objector contends that the premise in the application that *“The terroir of Devon, its climate, soil and native micro flora, means that varieties of any apples grown in Devon, native or otherwise, are noticeably distinct from apples grown in other counties, even those of the same variety”* is fundamentally flawed as it incorrectly suggests that Devon has a uniform terroir throughout the county and that similar terroir is not found in other parts of England. Objector (d) has provided evidence of the varied nature of the soil composition in Devon to support their argument. They also dispute the claim that *‘the softer character and rich colour of “Devon Cider” has been traditionally attributed to the red soils found around the county’*, as it would only be cider made from apples grown in the Redlands area of Devon which would support this claim. The applicant’s rebuttal of the geology of Devon does not provide any evidence to suggest the objector’s argument is incorrect; on the contrary it supports the evidence of the geodiversity of the county.

This objection shows that the condition in Article 5(1)(b) is not complied with, and therefore also shows that the condition in Article 7(1)(f) is not complied with, and so has been accepted as admissible.

Article 5(1)(c) - the production steps of which all take place in the defined geographical area.

The objection under this article is that the production steps and techniques are common throughout cider-making counties. Therefore there is nothing Devonian about the process. The only requirement of Article 5(1)(c) is for the production steps to take place within the county of Devon. The applicant group have stated in the application that this is the case and therefore the conditions of Article 5(1)(c) have been met and the objection is rejected.

Article 7(1)(b) - requires a description of the product, including the raw materials, if appropriate, as well as the physical, chemical, microbiological and/or organoleptic characteristics.

Objector (d) has stated that the “Devon Cider” application does not meet the conditions of Article 7(1)(b) because it is impossible to taste the difference between cider made on either side of the county borders. This objection is rejected as there is no requirement under Article 7(1)(b) for the taste to be different to cider made elsewhere. To meet the criterion, the organoleptic characteristics must be described but do not need to show that the qualities are unique.

Article 10(1)(d) - gives details from which it can be concluded that the name for which registration is requested is a generic term.

Objector (d) considers the name “Devon Cider” to be generic.

Whilst it is recognised that there is historic use of the term “Devon Cider” (and related terms) on a range of products, made in Devon under a range of conditions, processes and

raw materials, this does not constitute genericity. As the objector has not provided sufficient details from which such a conclusion can be drawn this objection is rejected.

Article 10(1)(c) - shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2)

The objector has provided details of products that use partly identical names to “Devon Cider” which have legally been on the market for more than five years. These products would be jeopardised if the registration of “Devon Cider” PDO was successful. This objection is therefore admissible.

To note: The objector has stated that the application does not meet the conditions of Article 8, however this is not an admissible grounds for opposition under Article 10(1) and therefore has not been considered.

Conclusion

Following assessment of the statements of opposition it has been concluded that there are admissible objections under Articles 10(1)(a) and 10(1)(c). The objections under Article 10(1)(a), relating to Article 5(1)(b) and therefore also Article 7(1)(f), have therefore been considered as part of the consideration of the application.

As a decision has been taken not to forward the application to the Commission, on the basis that it does not meet the requirements of Articles 5 and 7(1), the objections under Article 10(1)(c) are not relevant at this stage.