

THE JOINT EXAMINATION BOARD
PAPER T4 ADVANCED TRADE MARK SEARCH

Tuesday 9th November 2010

10.00 a.m. – 2.00 p.m.

*Please read the following instructions carefully. **Time Allowed – 4 HOURS***

1. This paper consists of a single question for which there are **100 marks**.
2. Please note the following:
 - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
 - b. Enter the Paper Number (T4), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
 - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly, examiners cannot award marks to scripts that cannot be read;
 - f. Reasoning should always be given where appropriate.
3. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
 - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
 - b. your mobile phone is found to be switched on;
 - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
 - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
4. **At the end of the examination assemble your answer sheets in question number order and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

This paper consists of 13 pages including this page.

T4 2010 – QUESTION

John Miller, a new client of your firm, and the owner of Priory Farm near Bridgwater in Somerset has recently written to you as follows:

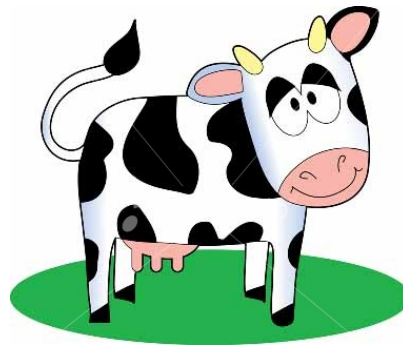
“I refer to our telephone conversation last Thursday advising that I wish to register the following three marks -

PRIORY FARM FOODS (word mark)

for “butter, cheese, milk, cream, dairy products, strawberries (cooked and dried), yoghurt, honey, Christmas puddings, strawberries (fresh); and retail services connected with the sale of butter, cheese, milk, cream, dairy products, strawberries, yoghurt, honey and Christmas puddings”;

IT JUST TASTE BUTTER! (word mark)

for “butter and dairy products”; and



for “butter, cheese, milk, strawberries (cooked and dried), yoghurt, honey, Christmas puddings, strawberries (fresh)”.

As mentioned in our conversation, Priory Farm dates back to the 1920s and butter, cheese, milk, and cream have been produced and sold continuously from the farm by my family using the trade mark PRIORY FARM FOODS since at least 1950. It is only since the late 1980s that yoghurt, honey and strawberries have been produced and sold from the farm. The complete range of goods bearing the trade mark PRIORY FARM FOODS shown above has only been sold nationally through a supermarket chain since May 2006.

I only commenced using the slogan IT JUST TASTE BUTTER! for butter and dairy products in April 2009.

The Cow Device was adopted in May 2008 and has appeared on all products alongside the words PRIORY FARM FOODS since this date. However, I believe the Cow Device was designed by an agency in London in June 1991.

None of the marks have previously been used for Christmas puddings and we intend to start selling these in 2 weeks time.

Please carry out searches and let me have your advice as soon as possible.”

You have carried out searches against the following marks, the results of which are attached:

1. PRIORY FARM FOODS

Class 29 – Butter, cheese, milk, cream, dairy products, strawberries (cooked and dried), yoghurt;

Class 30 – Honey, Christmas puddings;

Class 31 – Strawberries (fresh); and

Class 35 – Retail services connected with the sale of butter, cheese, milk, cream, dairy products, strawberries, yoghurt, honey and Christmas puddings.

2. IT JUST TASTE BUTTER!

Class 29 – Butter and dairy products.

3. Cow Device (as shown above)

Class 29 – Butter, cheese, milk, strawberries (cooked and dried), yoghurt;

Class 30 – Honey, Christmas puddings; and

Class 31 – Strawberries (fresh).

Advise your client on the freedom to use and register the three trade marks for the goods specified in the client's letter, indicating any further information you require and the steps which may be taken to overcome potential difficulties.


A search of the Internet has revealed that Farmfoods Limited was incorporated in Scotland in 1954 and that the company's website states that "Farmfoods are frozen food specialists" and "Farmfoods originated in Aberdeen in 1955 and has around 300 shops throughout Great Britain".

[100 marks]

1. PRIORY FARM FOODS




Trade mark No./ Dates	Trade mark	Information	Goods/services	Owner
UK 700234 App: 3 Aug 1951 Reg: 13 Sep 1952 Expiry date: 4 Aug 2010	FRIARY FARM	<i>Advertised before acceptance. Section 18(1) (proviso).</i> <i>Honest concurrent user claimed under Section 12(2) of the Trade Marks Act 1938. Use claimed from the year 1938.</i>	Class 29: Eggs, cream, milk and cheese, all for sale in England and Wales.	Friary Farm Limited Griffiths Way, St Albans, Hertfordshire, AL1 2RE
M 301815 Reg: 30 Aug 1965 Extended to the UK: 4 Jan 2010. Pending. Office of origin: France Basic reg: 252747, 10 Jun 1965	PRIOR		Class 29: Meat, fish, poultry and game; eggs, milk and other milk products; pickles. Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sauces, ices. Class 31: Agricultural products; fresh fruits, onions, vegetables, garden herbs and fresh vegetables.	Generale Biscuit 3 rue Saarinen, Bâtiment Saarinen F-94150 Rungis France

<p>UK 2124328B</p> <p>App: 19 Feb 1997 Reg: 21 Apr 2000</p>	<p>FARMFOODS</p>	<p><i>Proceeding because of distinctiveness acquired through use and trade evidence.</i></p>	<p>Class 29: Meat, fish, poultry and game; meat and fish spreads; soups; dried and cooked fruits and vegetables; frozen fruits and vegetables; jellies; jams, preserves, marmalade, peanut butter, cheese, yoghurt, cream and other dairy products.</p> <p>Class 30: Coffee, tea, cocoa, drinking chocolate; breakfast cereals; bread, pastries and other bakery products; biscuits; prepared meals; pies; sausage rolls; pizzas; pasta and prepared pasta dishes; cakes; meringues; puddings and desserts; mousses; potato chips; ice cream, ice lollies, choc ices; ice cream cones and wafers; ice cream toppings; confectionery..</p> <p>Class 32: Non-alcoholic beverages; preparations for making non-alcoholic beverages.</p>	<p>Farmfoods Limited 7 Greens Road, Blairlinn, Cumbernauld, Glasgow, United Kingdom, G67 2TU</p>
<p>CTM 631622</p> <p>App: 29 Aug 1997 Reg: 9 Jun 2000</p>	<p>farmfoods</p>	<p><i>Not opted in for notifications.</i></p> <p><i>Acquired distinctiveness.</i></p>	<p>Class 29: Meat, fish, poultry and game; meat and fish spreads; soups; dried and cooked fruits and vegetables; frozen fruits and vegetables; jellies; jams, preserves, marmalade, peanut butter, cheese, yoghurt, cream and other dairy products.</p> <p>Class 30: Coffee, tea, cocoa, drinking chocolate; breakfast cereals; bread, pastries and other bakery products; biscuits; prepared meals; pies; sausage rolls; pizzas; pasta and prepared pasta dishes; cakes; meringues; puddings and desserts; mousses; potato chips; ice cream, ice lollies, choc ices; ice cream cones and wafers; ice cream toppings; confectionery.</p> <p>Class 32: Non-alcoholic beverages; preparations for making non-alcoholic beverages.</p>	<p>Farmfoods Limited 7 Greens Road, Blairlinn, Cumbernauld, Glasgow, United Kingdom, G67 2TU</p>


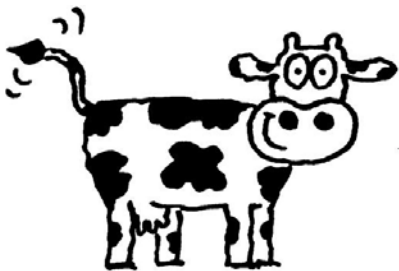
CTM 6530381 App: 19 Dec 2007 Reg: 27 Nov 2008		<i>Not opted in for notifications.</i>	Class 29: Dairy products, including preserved dairy products; milk and milk products; milk powder, evaporated milk; condensed milk; edible oils and fats; butter, butter oil, desserts included in this class.	Campina Nederland Holding B.V. Hogeweg 9, Zaltbommel, Netherlands, 5301 LB
UK 2550432 App: 15 Jun 2010 Pending	PRYOR FARM FOODS PRYOR FARM PRODUCE	<i>Application for a series of 2 marks.</i>	Class 31: Agricultural, horticultural and forestry products and grains not included in other classes; seeds, natural plants, flowers, fruits and vegetables. Class 35: Wholesaling and retailing of agricultural, horticultural and forestry products and grains, seeds, natural plants, flowers, fruits and vegetables. Class 39: Food delivery services.	Mary Pryor 39 Drumcroone Road Killykergan, Coleraine, Northern Ireland BT51 4EB


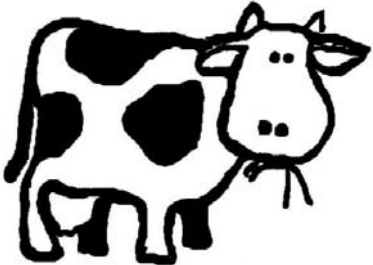
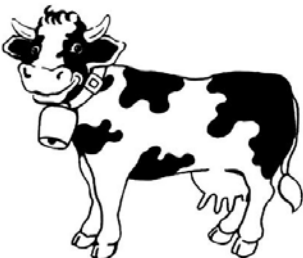
2. IT JUST TASTE BUTTER!


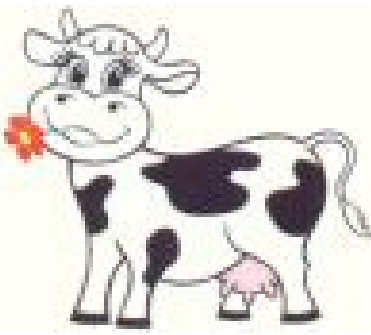
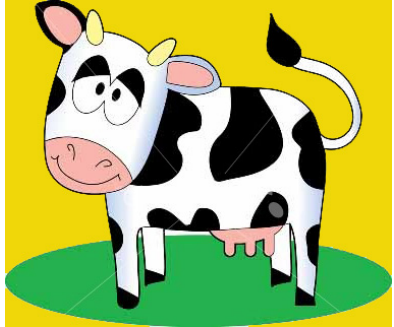
Trade Mark No/ Dates	Trade Mark	Information	Goods/services	Owner
UK 2334870 App: 12 Jun 2003 Reg: 14 Jan 2005	MAKING SUMMER TASTE BETTER		<p>Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.</p> <p>Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionary, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ices.</p> <p>Class 31: Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.</p> <p>Class 32: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.</p> <p>Class 42: Restaurant services.</p>	J Sainsbury plc 33 Holborn London EC1N 2HT
CTM 3684834 App: 26 Feb 2004 Reg: 31 May 2005	JUST	Not opted in for notifications.	Class 30: Confectionery, chocolate; products made from or consisting primarily of chocolate; biscuits; snacks; ices.	Fox's Confectionery Limited Sunningdale Road, Braunstone, Leicestershire, United Kingdom, LE3 1UE


<p>CTM 5165154</p> <p>App: 28 Jun 2006 Reg: 12 Mar 2009</p>		<p>Colours: red.</p> <p>Not opted in for notifications.</p>	<p>Class 29: Eggs, milk and milk products; edible oils and fats; fat-containing mixtures for bread slices; butter; butter cream; margarine; jams; milk beverages [milk predominating]; whey; cream (dairy products); whipping cream.</p>	<p>Just Food Services Ltd. Etrick Riverside Business Centre Dunsdale Road, Selkirk, United Kingdom, TD7 5EB</p>
<p>CTM 5570668</p> <p>App: 20 Dec 2006 Reg: 29 Oct 2007</p>		<p>Not opted in for notifications.</p>	<p>Class 29: Olive oils, salad oils, rice bran oils; dairy spreads, rice bran oil spreads.</p>	<p>Old Fashioned Foods Limited 160 Rockfield Road Penrose Auckland New Zealand</p>
<p>UK 2501458</p> <p>App: 1 Nov 2008 Reg: 22 May 2009</p>			<p>Class 29: Milk and milk products.</p>	<p>Candia 42 Cours Suchet, 69002 Lyon, France</p>
<p>UK 2549325</p> <p>App: 3 Jun 2010 Pending</p>	<p>BUTTERTASTE</p>		<p>Class 29: Vegetable fat spread containing butter-milk; butter; margarine; vegetable oil based spreads; cheese; yogurt; milk; dairy products; spreads; edible oils and fats; buttermilk.</p>	<p>Kerry Group Services International Limited Prince's Street, Tralee, County Kerry, Republic Of Ireland</p>



Trade mark No/ Dates	Trade mark	Information	Goods/services	Owner
CTM 119305 App: 1 Apr 1996 Reg: 4 Mar 2002		<i>Colours: Green, black, white.</i> <i>Not opted in for notifications.</i>	Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and milk products; edible oils and fats, including butter oil known as "ghee", preserves, pickles. Class 30: Preserves not included in other classes; salad dressings.	Koninklijke VIV Buisman B.V. Raadhuislaan 4, 3633 AR, Vreeland, Netherlands
UK 2155508 App: 14 Jan 1998 Reg: 3 Jul 1998			Class 29: Food products made from meat, fish, poultry and game; pate; pastes; spreads; food products made from preserved, dried and cooked fruits and vegetables; dairy products; butter; milk and milk products; yoghurt; cheese and cheese products; prepared meals and snack foods included in this class. Class 30: Bread, pastry and confectionery; biscuits; crackers; cakes; preparations made from flour and cereals; pies; pizzas; sandwiches; prepared meals and snack foods included in this class.	Kraft Foods UK Intellectual Property Limited St. George's House, Bayshill Road, Cheltenham, Gloucestershire, GL50 3AE

<p>CTM 3976826</p> <p>App: 30 Jul 2004 Reg: 22 Jan 2009</p>		<p><i>Colours: White, black, blue, beige.</i></p> <p><i>Not opted in for notifications.</i></p>	<p>Class 29: Fat-containing mixtures for bread slices; fruit jellies; yoghurts; potato crisps; potato flakes; potato dumplings; potato fritters; snacks, included in class 29; compotes; jams; consommés, soups; marmalade; milk; milk beverages [milk predominating]; milk products; whey.</p> <p>Class 30: Ice cream; iced tea; peanut confectionery; sorbets, ices, powder for edible ices; confections.</p> <p>Class 32: Non alcoholic drinks.</p> <p>Class 34: Tobacco; smokers' articles.</p>	<p>RTL Disney Fernsehen GmbH & Co. KG Richard-Byrd-Str. 6, Köln, Germany, 50829</p>
<p>CTM 4277729</p> <p>App: 7 Feb 2005 Reg: 27 Mar 2006</p>		<p><i>Not opted in for notifications.</i></p>	<p>Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.</p> <p>Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice, ices, ice creams, ice cream based products.</p>	<p>Cowatch S.A. Rue Verheyden, 7, Bruxelles, Belgium, 1080</p>
<p>CTM 6158992</p> <p>App: 1 Aug 2007 Reg: 24 Jul 2008</p> <p>Priority: 14 May 2007, Italy, TV2007C000410</p>		<p><i>Not opted in for notifications.</i></p>	<p>Class 29: Milk and milk products, cheeses.</p>	<p>Latteria Montello S.P.A. Via Fante d'Italia, 26, Gaiava del Montello (Treviso), Italy, 31040</p>

<p>UK 2501957</p> <p>App: 12 Nov 2008 Reg: 15 May 2009</p>		<p><i>Colours: White, black, pink, green and blue.</i></p>	<p>Class 5: Dietetic substances adapted for medical use, food for babies. Class 29: Milk and milk products; edible oils and fats; cheeses. Class 30: Puddings. Class 35: The bringing together, for the benefit of others, of a variety of dairy products, cheeses, edible oils and fats, snacks and puddings, enabling customers to conveniently view and purchase those goods from a general merchandise retail store, Internet web site or catalogue.</p>	<p>The Canal Road Cow Limited Canal Road, Trowbridge, Wiltshire, BA14 8RJ</p>
<p>M 1028913</p> <p>Reg: 12 Nov 2009</p> <p>Extended to CTM: 12 Nov 2009 Advertised OHIM: 18 Feb 2010</p> <p>Office of origin: Serbia Basic reg: 54154, 5 Feb 2008</p>		<p><i>Colours: White, black, red, pink, yellow and green.</i></p>	<p>Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruit and vegetables; jellies, jams, eggs, milk and milk products; edible oils and fats; preserves, pickles.</p>	<p>Milenko Manigodić et Djuro Manigodić, avocats Kumanovska 2-B 11111 Beograd Serbia</p>
<p>M 1030262</p> <p>Reg: 16 Jan 2010</p> <p>Extended to CTM: 16 Jan 2010 Advertised OHIM: 18 Mar 2010</p> <p>Extended to UK: 17 Apr 2010</p>			<p>Class 29: Milk and milk products; edible oils and fats; preserves. Class 30: Mixtures for making yoghurt; chocolate beverages containing milk.</p>	<p>Cow Farms (Aust) Pty Ltd 65 – 69 Stephen Road Botany NSW 2019 Australia</p>

<p>Advertised UK: 4 Sep 2010</p> <p>Office of origin: Australia Basic reg: 565675, 23 Oct 1991</p>				
<p>UK 2544689</p> <p>App: 13 Apr 2010 Advertised: 21 May 2010</p>			<p>Class 30: Dairy ice creams; non dairy ice creams; mixtures for making ice creams; frozen yoghurt; yoghurt based ice cream; mixtures for making yoghurt.</p> <p>Class 35: The bringing together for the benefit of others, of a variety of beverages enabling the customer to conveniently view and purchase those beverages from retail outlets, restaurants, cafes, cafeterias, snack-bars, non-alcoholic drink bars and by mail order through catalogues and the internet; administration of the business affairs of franchises; advisory services relating to the establishment of franchises; business assistance relating to the establishment of franchises.</p> <p>Class 43: Provision of drink; restaurants; cafes; cafeterias; snack-bars; bar services; banqueting services; non-alcoholic drink bars; provision of beverages for consumption on premises or to be taken away; catering (food and drink); provision of food and drink.</p>	<p>Projuice Limited Unit C1 & C2 Sanderling Court, Osprey Road, Sowton, Exeter, Devon EX2 7PJ</p>