

THE JOINT EXAMINATION BOARD

PAPER T4

ADVANCED UNITED KINGDOM TRADE MARK SEARCH

9th November, 2004

10.00 a.m. – 1.00 p.m.

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

1. This paper consists of a single question for which there are **100** marks.
2. Where an issue permits of reasons being given for the conclusions reached, such reasons should be given.
3. Please note the following:
 - Start each question (**but not necessarily each part of each question**) on a fresh sheet of paper.
 - Enter the Paper Number, the question number and your Examination number in the appropriate boxes at the top of each sheet of paper.
 - Write on **ONE SIDE** of paper only, within the printed margins using a **BLACK** pen.
 - **DO NOT** use coloured pens or highlighters within the answers – they will not photocopy.
 - **DO NOT** staple or join pages together in any way.
 - **DO NOT** state your name anywhere in the answers.
4. **NO** printed matter or other written material may be taken into the examination room. **ALL** mobile phones and electronic aids **must be** switched off and stored away.
5. Answers **MUST** be legible. If the examiners cannot read a candidate's answer no marks will be awarded.
6. **NO WRITING OF ANY KIND WILL BE PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED. At the end of the examination, assemble your answer sheets in question number order and place in the WHITE envelope provided.**

This paper consists of 10 pages including this page.

T4 2004 – QUESTION

You act for Viva Enterprises Limited, a company that produces fruit juice and fruit based alcoholic drinks. These drinks have a very distinctive and unique taste, and have been sold under the name **VIVA** since 1995. Your client's business has been very successful for the last six years and, in view of the strong performance of its core products, your client is considering launching a range of fruit flavoured or fruit based confectionery, chocolates and ice cream, all having the same distinctive and unique taste as its drinks.

Your client is also considering using the distinctive taste in relation to a range of both home and professional dental products such as toothpaste, gums, films, strips and pastes for cleaning the mouth or teeth, breath freshening preparations.

In order to allay any public concern about the sweetness of the taste, your client wants to devise a "tooth-friendly" symbol, which will be used on all of their goods and also on those of a subsidiary company who plan, in time, to expand the usage to their "walk-in" dental practices.

The mark your clients have chosen is shown below.



In connection with its trade in fruit juices and fruit based non-alcoholic drinks, the client has been applying the strap-line **THE WOW FACTOR!** for the last two months. Apart from appearing on the goods, this strap-line has been extensively used in the client's radio advertising during this period. The client now intends to also use this strap-line for its new fruit flavoured or fruit based confectionery, chocolates and ice cream.

Your client has no existing trade mark registrations and is now seeking your advice. In particular, you are asked to conduct UK trade mark searches for the following trade marks:

- **VIVA** for fruit juices and fruit based non-alcoholic drinks, confectionery, chocolates and ice cream.
- Tooth device for toothpaste, gums, films, strips and pastes for cleaning the mouth or teeth, breath freshening preparations and dental services.
- **THE WOW FACTOR!** for fruit juices and fruit based non-alcoholic drinks, confectionery, chocolates and ice cream.

Searches have been conducted and are attached. Report these to your client in the form of a letter and advise them on their freedom to use and register these trade marks.

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VIVA—SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
UK 1165654 App: 01 Dec 1981 Reg: 28 May 1986		Translation: The Spanish word appearing in the mark means "Life". <i>Advertised before acceptance by reason of special circumstances</i>	Class 32: Fruit juices for use as beverages.	Atlantic Industries PO Box 1043, Cardinal Avenue George Town Grand Cayman BWI Cayman Islands
CTM 23572 App: 01 Apr 2002 Advertised 30 Sep 2004	VIVA		Class 30: Confectionery, also as dietetic substances not for medical use, made using sugar substitutes, chewing sweets with liquid fillings, peppermint pastilles, peppermint sweets, chocolate, goods made from chocolate, pralines, also with liquid fillings of wines, spirits or fruit preparations, chewing gum also made using sugar substitutes ; with the exception of edible ices and all iced or frozen products.	VIVIL A. Müller GmbH & Co. KG Moltkestr. 33 D-77654 Offenburg GERMANY
CTM 2768620 App: 09 Jul 1996 Reg: 26 Sep 2002	VIVA!		Class 16: Packaging materials; wrapping materials; bags of paper or plastics for packaging; boxes of cardboard or paper; bubble packs for wrapping or packaging; cardboard; plastic film for wrapping; printed matter. Class 29: Prepared food products; canned fruits and vegetables; preserved fruits and vegetables; frozen vegetables; vegetable preserves; dried and cooked fruits and vegetables; vegetables in oil, vinegar or brine.	Egyptian Dairy & Foodstuff Co. S.A.E. (EDAFCO) Industrial Zone (A1) P.O Box 458 Tenth of Ramadan City EGYPT
CTM 1292481 App: 30 Aug 1999 Pending application	Aqua Viva		Class 32: Non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages. Class 32: Non-alcoholic beverages, mineral waters.	RHODIUS Mineralquellen und Getränke GmbH & Co. KG Postfach 2 07 D-56657 Burgbrohl ALEMANIA

VIVA—SEARCH RESULTS

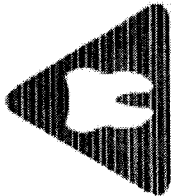
Registration No/ Dates	Representation	Information	Goods	Owner
M 711325 Reg: 18 Feb 1999	AVIVA		Class 5: medicines, pharmaceutical preparations, dietetic substances for medical use, dietetic products for medical use and as hospital meals, dietetic food supplements for medical purposes, food for infants. Class 29: meat, fish, poultry and game, meat extracts; preserved, dried and cooked fruits and vegetables, jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; meat, fruit and vegetable preserves. Class 30: coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals, bread, pastry and confectionery, edible ice; honey, molasses; yeast, baking powder; salt, mustard; vinegar, spices; cooling ice. Class 32: mineral and sparkling water and other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages.	Novartis Nutrition AG 118, Monbijoustrasse, Bern, CH-3007 SWITZERLAND
CTM 415794 App: 30 Oct 2001 Adv: 26 Oct 2004	VIVA GOLD		Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; preserves of meat, fish, poultry and game; snacks and ready-made-meals, included in this Class; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats. Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle; yeast, baking-powder; salt, mustard; vinegar, herbal sauces; spices; ice; snacks and ready-made-meals, included in this Class. Class 32: Beers; mineral and aerated waters. Class 33: Alcoholic beverages (except beers).	Orion Business Services Ltd. 1-2 Cricketers Parade Broadwater Street West Worthing, West Sussex BN14 9DB UK

VIVA—SEARCH RESULTS

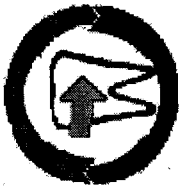
Registration No/ Dates	Representation	Information	Goods	Owner
CTM 432178 App: 30 Oct 1996 Reg: 26 Oct 1999	VIA		Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; preserves of meat, fish, poultry and game; snacks and ready-made-meals, included in this Class; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats. Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle; yeast, baking-powder; salt, mustard; vinegar, herbal sauces; spices; ice; snacks and ready-made-meals, included in this Class. Class 32: Beers; mineral and aerated waters. Class 33: Alcoholic beverages (except beers).	Orion Business Services Ltd. 1-2 Cricketers Parade Broadwater Street West Worthing, West Sussex BN14 9DB UK
IR 758472 Reg 06 Apr 2001	DIVA		Class 33: Alcoholic beverages (except beer).	DIVA (SA) 3, rue de Grenier a Sel F-21000, Dijon FRANCE

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TOOTH DEVICE – SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
UK B1,543,317 App: 29 Jul 1993 Reg: 17 Dec 1996		Disclaimer: <i>Registration of this mark shall give no right to the exclusive use of the device of a tooth.</i>	Class 3: Preparations and substances, all for the mouth and teeth; non-medical preparations and substances, all for the care of the mouth and teeth; non-medical preparations and substances, all for the prophylactic care of the mouth and teeth; all included in Class 3. Class 5: Preparations and substances, all for the mouth and teeth; medical preparations and substances, all for the care of the mouth and teeth; medical preparations and substances, all for the prophylactic and therapeutic care of the mouth and teeth; all included in Class 5. Class 21: Toothbrushes; all included in Class 21.	Gaba International St. Johanns- Vorstadt 98 4056 Basle Switzerland
UK 2,014,333 App: 15 Mar 1995 Reg: 2 Jun 1997		Mark Type: <i>Form (shape) type mark.</i> <i>The mark consists of a three-dimensional shape.</i>	Class 3: Non medicated toilet preparations; dentifrices, mouth washes.	Beecham Group p.l.c. 980 Great West Road Brentford Middlesex TW8 9GS
UK 2,050,350 App: 3 Jan 1996 Reg: 27 Dec 1996			Class 3: Perfumes, cosmetics; shampoos, conditioners, styling mousse and gel; antiperspirants and deodorants; toilet preparations; dentifrices, toothpastes, mouth washes and mouth rinses; preparations for the care of the oral cavity, mouth and teeth.	Colgate-Palmolive Company 300 Park Avenue New York New York 10022- 7499 USA

TOOTH DEVICE – SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
CTM 3,136,694 App: 7 Jun 1999 Reg: 15 Mar 2002			Class 3: [English] Confectionery for cosmetic purposes, in particular chewing gum for cosmetic purposes. Class 5: [English] Confectionery for medicinal purposes, in particular chewing gum for cosmetic purposes. Class 30: [English] Non-medicated confectionery, in particular non-medicated chewing gum.	WM. Wrigley JR. Company Wrigley Building 410 North Michigan Avenue Chicago, 60611 Illinois United States
UK 2,317,954 App: 17 May 2004			Class 10: Surgical, medical and dental apparatus and instruments	Ortho-form Ltd. Ortho works P.O. Box 471 Luton Bedfordshire UK
UK 2,187,436 App: 30 Nov 2003 Advised 22 Sep 2004			Class 21: Mouth showers. Class 30: Non medicated chewing gum.	D. Vicente Laserna Santos Virgen de Aranzazu, n° 7 Madrid 28034 Spain

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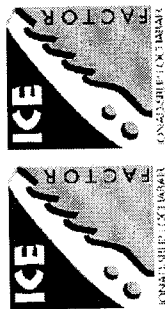
THE WOW FACTOR! – SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
CTM 1,002,342 App: 30 Nov 1998 Reg: 14 Mar 2000	WOW		Class 5: Dietary supplements; dietetic substances for medical use; food for infants. Class 35: Advertising and business.	Grupo Omnilife, S.A. De C.V. Calzada de los Fresnos 34, Ciudad Granja Zapopan (Jalisco) Mexico
CTM 3,536,925 App: 12 Nov 2003 Pending	THE Q FACTOR		Class 5: Nutritional, dietary and/or herbal supplements and preparations. Class 29: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; meals and constituents of meals included in class 29; meal replacement preparations included in class 29; drinks included in class 29; soups. Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; meals and constituents of meals included in class 30; meal replacement preparations included in class 30; drinks included in class 30. Class 32: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; vegetable drinks and vegetables juices. Class 41: Education; providing of training; entertainment; sporting and cultural activities.	Pharmanex, LLC One Nu Skin Plaza 75 West Center Street Provo, 84601 Utah United States
CTM 843,763 App: 5 Jun 1998 Reg: 18 Aug 1999	LAYS WOW!		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. Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.	Pepsico, Inc 700 Anderson Hill Road Purchase, New York, 10577- 14444 United States
CTM 1,012,399 App: 5 Dec 1998 Reg: 19 Oct 1999	www.factor.com		Class 29: Prepared food products; preserved fruits and vegetables; frozen vegetables; dried and cooked fruits and vegetables. Class 30: Coffee, tea, cocoa, sugar, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; edible ice; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice. Class 32: Fruit drinks and fruit juices; non-alcoholic drinks; preparations for making beverages.	The New Factor, Inc. 300 Madison Avenue E, Columbus, Ohio, 11564 United States

THE WOW FACTOR! – SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
M730461 App: 16 Jul 1999 Reg: 13 Jan 2001	THE WOW FACTORY		Class 29: Preserved, dried and cooked fruits and vegetables; jellies; jams; fruit sauces; milk and milk products. Class 30: Coffee, tea, cocoa, artificial coffee; confectionery; ices; sauces (condiments); spices; ice; preparations made from cereals. Class 31: Fresh fruits and vegetables; agricultural, horticultural and forestry products not included in other classes. Class 32: Fruit drinks and fruit juices; non-alcoholic drinks; syrups and other preparations for making beverages.	Joseph Maria B. V. Zilvermeeuw 2 Breda 4822 Netherlands
UK 2,206,653 App: 23 Aug 1999 Reg: 11 Aug 2000	FACTOR X		Class 30: Rice, pasta; cereals and cereal preparations; tea, coffee, cocoa; drinking chocolate, coffee essence, coffee extracts, mixtures of coffee and chicory, chicory and chicory mixtures, all for use as substitutes for coffee; non-medicated confectionery; pastries, cakes, biscuits; ices, ice cream, ice cream products, frozen yoghurt, frozen confections; chilled desserts; mousses, sorbets; bread; pastry; drinks, fillings; sweet spreads, savoury pizzas, snack foods, prepared meals and constituents for meals; chocolate; pizzas, pizza bases; sauces and toppings for pizzas; sauces for pasta and rice; salad dressings; mayonnaise; sauces; dips; all included in Class 30.	Mars U.K. Ltd 3D Dundee Road Slough Berkshire SL1 4LG

THE WOW FACTOR! – SEARCH RESULTS

Registration No/ Dates	Representation	Information	Goods	Owner
UK 1,019,478 App: 23 Oct 1973 Reg: 25 Sep 1975	WOW	Honest concurrent user claimed under Section 12(2) of the Trade Marks Act 1938. Advertised before acceptance by reason of special circumstances. Section 18(1) proviso. Conditions: A debenture in favour of Barkdale Financial Services Limited, 23 Queen Anne Street, London W1R 3FP, a company incorporated in England and Wales ("Barkdale") dated 17 June 2001. The debenture contains a fixed charge over the trade mark registrations and applications listed above and prohibits the registered proprietor, Stockton Wines Limited from inter alia doing the following without the consent of Barkdale: (i) selling, transferring, licensing or otherwise disposing of any of the trade mark registrations and applications; or (ii) permitting any of the trade mark registrations and applications to be abandoned or cancelled, to lapse or to any claim for abandonment for non-use or otherwise.	Class 31: Foodstuffs for dogs and for cats. Class 32: Fruit drinks; all being for sale over the Internet. Class 33: Wines; all being for sale over the Internet.	Luda Pet Food Ltd Thames Street Louth Lincolnshire LN11 7BR
UK 2,108,624 App: 15 Sep 1998 Reg: 7 Apr 1999	WOW			Stockton Wines Ltd Regal House North Circular Road London NW10 7QN
UK 2,339,321 App: 31 Jul 2003 Pending		Conditions: The applicant claims the colours blue and white as an element of the second mark in the series.	Class 41: Provision of leisure and recreational facilities; provision of entertainment facilities; leisure centre and recreational services; entertainment services relating to sport; rental of sports equipment; rental of mountaineering and climbing equipment; mountaineering and climbing tuition and training services; organisation of sporting competitions; organisation of entertainment and social events. Class 43: Restaurant services; catering services; bar services; wine bar services; bistro services.	The Ice Factor Ltd Leven Road Kinlochleven Perthshire PH50 4SF