

**MASTER PROGRAMME  
EUROPEAN  
INTELLECTUAL PROPERTY LAW  
MODULE 1  
2007**

**HOME EXAM**

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Answers can be written in the following languages: Danish, English, French, German or Swedish.

**You are not supposed to have special knowledge of national law for the purpose of the exam. You should, thus, give your answers with references to European directives and regulations and, if relevant, to European and international conventions/treaties.**

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**Send the assignment to Elias Cansu  
by mail or fax  
before 9:00 am (Swedish time)  
on April 3, 2007**

**Name the file after your last name!**

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Master Programme in European Intellectual Property Law 2007  
Stockholm University  
Module 1

### **Your task**

Your task is to write a memorandum of law that identifies the legally significant facts and legal issues, references the relevant sources of law, applies the law to the relevant operative facts, and draws logical and well-documented conclusions.

The memorandum should cover the questions emphasised in italics, be objective and should identify both the strengths and weaknesses of your conclusions. Any further legally relevant observation is welcome! Each issue should be treated separately. Excessive overlapping of thought in the discussion indicates that you have not identified the issues with sufficient precision.

The teaching staff will take into consideration both the substantive treatment of the facts and issues as well as the more formal aspects of the memo, namely, the correct treatment of sources, the use of clear and concise legal language and brevity. Do not exceed 5000 words!

Good luck!

*Marianne Levin*

Stockholm, 30 March 2007

Peter of Peter Fruit Ltd., a British Company, has developed a smooth type of multi-vitamin drink based on fruits and vegetables. Peter has come up with a new method for enhancing the quality of freshly pressed juice. In this process, the juice is heated to a minimum of 80 and a maximum of 99 degrees Celsius. The juice is then rapidly cooled to a minimum of 0 degrees Celsius. The rapid heating and cooling process preserves the vitamins in the juice and keeps it fresh longer. Another effect is that the juice develops a thicker consistency, making it look and taste much like a smoothie.

Peter Fruit Ltd. applies for a European patent on the process on the 5 of May 2001. The patent is granted on the 7 of June 2004. The designated countries are United Kingdom, the Netherlands, Belgium, France and Austria. The patent covers the process for manufacturing the juice. The patent claims the use of a process where the temperature range is specified from 80 to 99 degrees Celsius. During subsequent experimentation, however, Peter discovered that the process is actually only effective within the range of 93-95 degrees Celsius, but he keeps this information for himself.

Peter Fruit Ltd. calls the new drink MultiVitaTutti. Due to the awareness among British customers of maintaining a healthy life style, MultiVitaTutti becomes a rapid success on the British market. Peter Fruit Ltd. applies for an EC-trademark on the 21 of January 2002 in order to protect a broader market for future sales.

Pietro of Pietro Frutti SpA in Northern Italy reads an article by the famous professor Vitali about how anti-oxidants existing in red and yellow vegetables strengthens the human body's own immune defence. He develops a drink based on red and yellow vegetables and starts selling it under the name MultiVitaFrutti in late 2001. His inspiration for the name comes from his own company name as well as professor Vitali's name. Pietro thinks the name is a splendid combination and is also suggestive of the ingredients. The drink is processed at the Pietro Frutti plant just over the border in Germany where the water is even purer than Pietro's own beloved country Italy.

To market his drink, Pietro uploads quotes from professor Vitali's article (in Italian) on his website. Pietro believes that he can only benefit from the drink's association with such a distinguished professor. When professor Vitali finds out about the use of his name and text on Pietro Frutti SpA's website, however, he is upset. Professor Vitali's own research is funded by Dole Fruit Company and he is worried that there may be a conflict of interest. In addition, he feels that the connection to Pietro Frutti SpA's commercial product risks his scientific credibility. Professor Vitali informs Pietro that he feels utterly offended by his actions.

Pietro's underpaid research assistant, Luca Brasi, who had been secretly working day and night at the Pietro Frutti SpA lab, discovered on Christmas Day 2000 a new process for rapid heating and cooling freshly pressed juice which preserves the vitamins in the juice and keeps it fresh longer. The temperature interval for the working of the process is 93-95 degrees Celsius for the heating and 0 degrees for the cooling. After a testing phase is completed, Pietro takes action in early 2001 to prepare the relaunch of the drink. The drink is a huge success in Italy so Pietro Frutti SpA expands its markets and by 2004 the drink is exported to several European countries, including United Kingdom, France and Belgium.

Shortly thereafter, Pietro is contacted by Peter Fruit Ltd. who claims that Pietro is infringing his patent and trademark rights and is acting against fair competition. In addition, Professor Vitali is also threatening with a lawsuit. Pietro, who is in dire need of cash to give his hard working research assistant his demanded raise, is worried that Peter Fruit Ltd. may be able to stop his activities at once and wonders if this is possible.

*Make a legal analysis of all the claims which may be asserted against Pietro Fruitti SpA and any possible defences he may possess. In addition, analyse in which jurisdictions, Pietro may be amenable to suit as well as what law is applicable and what sanctions are available. You can ignore any conflict of interest issues.*