




**Australian
Competition &
Consumer
Commission**

**Final Assessment of application to vary the rules governing Certification Trade Mark
Application 721900 lodged by the Stilton Cheese Makers Association**

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above application.

The ACCC's Final Assessment is that it is satisfied that:

- (a) the rules governing the use of the CTM, as proposed to be amended, would not be to the detriment of the public; and
- (b) the rules governing the use of the CTM, as proposed to be amended, would be satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.......... (Commissioner)

Date.....9 MARCH 2007.....

Certified copy
pursuant to section 175(2)(b)
of the *Trade Marks Act 1995*


.....
Commissioner

09-03-07
.....
Date

THE STILTON CHEESE MAKERS ASSOCIATION
REGULATIONS

Governing the use of Certification Trade Mark Registration
No. 721900 Relating to Cheese

- 1
- a) "The Association" means The Stilton Cheese Makers Association.
 - b) "The Association in Committee" means the Committee managing the business of the Association and consisting of all the members of the Association.
 - c) "Authorised User" means any person for the time being, authorised by the Association in Committee to use the Trademarks under a Certificate.
 - d) "Certificate" means any certificate issued or renewed in accordance with these Regulations.
 - e) "Cheese" means White Stilton Cheese, Blue Stilton Cheese and Mature Blue and/or Vintage Blue Stilton Cheese as defined in Schedule 1 to these Regulations.
 - f) "The County Boundaries of the Counties of Leicestershire, Derbyshire and Nottinghamshire" means those boundaries which were recognised at 28 February 1962 as defining the respective areas of the said three counties.
 - g) "Person" means any individual or any body corporate or unincorporated.
 - h) "The Trademarks" means Certification Trademark Registration No. 721900.
 - i) "Applicant" means any person seeking authorisation of the Association in Committee to use the Trademarks under the Certificate
 - j) "Producer" or "Manufacturer" means any cheese producer or cheese manufacturer.

- 2 The Trademark is the absolute property of the Chairman of the Association and shall not be used (a) by any producer except under and by virtue of a Certificate issued in accordance with these Regulations, or (b) by any wholesaler or retailer except in respect of Cheese already marked by a producer under and by virtue of that producer's Certificate.
3. These Regulations, hereinafter known as the 2005 Regulations will, once in force, apply immediately to any new applicant for authorised user status. So far as existing authorised users, at the date of the 2005 Regulations coming into effect, are concerned, the Regulations contained in paragraphs 7, 14, 16, 17 and 18 will come into effect, so far as those existing authorised users are concerned, from a date no later than 2 calendar years after the coming into force of these 2005 Regulations.
- 4 The power of issuing, renewing and cancelling a Certificate is vested in the Association in Committee.
- 5
 - a) Subject to Regulations 5(c) and 5(d), no Cheese shall be certified which does not conform in all respects to the definition set out in Schedule 1 hereto.
 - b) Subject to Regulations 5(c) and 5(d) the Trademark shall not be used in relation to any Cheese whatsoever which does not conform to the definition set out in Schedule 1 hereto.
 - c) When a whole Cheese does not conform to the definition of White Stilton Cheese, Blue Stilton Cheese or Mature Blue and/or Vintage Blue Stilton Cheese set out in Schedule 1 hereto because: -
 - i) the coat is cracked and/or,
 - ii) the whole Cheese is not of a regular shape and not uniform in circumference and/or,
 - iii) the coat is damp or moist,

the Trademark may still be used in relation to the same Cheese so long as the Cheese is sold only in pre-packed portions and not as a whole.

- d) third party Cheese packaging establishments may be able to use the Trademarks on pre-packaged portions of STILTON Cheese provided that:
 - i) Up-to date records are maintained to show:
 - the quantities of STILTON Cheese that have been delivered to the establishment and
 - the quantities of the said Cheese that have been despatched from the establishment.
 - ii) The records are made available for inspection by duly authorised persons.
- e) Manufacturers of processed foods may use the Trademark provided that the foods in question actually contain STILTON Cheese which meets the requirements set out in Schedule 1. STILTON Cheese may have been processed prior to its use for manufacture.

6 Any Person producing Cheese within the County Boundaries of the Counties of Leicestershire, Derbyshire and Nottinghamshire may apply for Authorisation to use the Trademark under a Certificate by completing a form of application and executing a form of undertaking as shown in Schedule 2(B).

7 Any Cheese producer or Cheese manufacturer resident in the counties of Leicestershire, Derbyshire or Nottinghamshire shall be granted a Certificate (as shown in Schedule 2A) to use the Trademark as an Authorised User if the Association in Committee is satisfied: -

- a) that the authorised user shall comply at all times with a code of best practice which shall be equivalent to or of a higher standard than the then current applicable British Retail Consortium Code of Practice or its direct equivalent. Details of the current British Retail Consortium Code of Practice can be found at www.brc.org.uk/standards/about_food.htm.
- b) in the case of a new applicant or where an existing authorised user intends to produce STILTON cheese using a new dairy or new equipment then the said applicant or said authorised user shall be subject to a probationary period during which time the Association in Committee shall have the right to send their duly

authorised representative to the applicant or authorised user at the following times.

- i. when the first batch of STILTON cheese is made
 - ii. at a date not less than 6 weeks from the first batch of STILTON being made the Association in Committee will grant a temporary authorisation, subject to a satisfactory report from the authorised representative, to the applicant or authorised user to produce STILTON cheese.
 - iii. thereafter the applicant or authorised user will enter into a probationary period, to be set by the Association in Committee on a case-by-case basis, during which time the authorised representative of the Association in Committee will inspect successive batches of STILTON cheese made by the applicant or authorised user every 6 weeks until the authorised representative has satisfied himself that the applicant or authorised user is able to produce STILTON cheese satisfactorily according to these Regulations and is able to identify any faults in the STILTON cheese produced according to these Regulations and the reasons for those faults.
 - iv. the cost of the additional inspections during this probationary period will be borne by the applicant or authorised user and will comprise only the direct costs incurred by the Association in Committee as a consequence of the costs incurred by their authorised representative.
- c) that subject to Regulations 5(c) and 5(d) the Applicant will use the Trademark only on Cheese which conforms in all respects to the definition set out in Schedule 1 hereto;
- d) that the applicant has given satisfactory assurances that Cheese that he has produced or intends to produce in relation to which he wishes to use the Trademark contains full cream pasteurised cow's milk which has been produced by dairy herds from England (at time of shortage milk may also be sourced from Wales) and that the Cheese has not in any way been produced outside the County Boundaries of the Counties of Leicestershire, Derbyshire or Nottinghamshire;
- e) that the Applicant will use the Trademark only in the form authorised by the Association, a representation of which form will be shown on the Certificate;

- f) that the Applicant will use the Trademark in relation to Cheese by applying them to the wrappers, boxes, cartons, foils or other packaging materials in which the said Cheese is contained; and
- g) that in the event of any change in his address the Applicant will at once inform the Association in Committee thereof.

Upon prompt payment by the Applicant of the fee referred to in Regulation 10, a Certificate shall be issued to the Applicant who shall thereupon become an Authorised User.

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- 8 The Association in Committee shall have the right to send their duly authorised representative at any reasonable time to inspect the Authorised User's Cheese and methods of production on the Authorised User's premises and to do all such reasonable acts as may be necessary to satisfy himself on behalf of the Association in Committee that the Regulations for governing the use of the Trademark are being complied with.
- 9 The Association in Committee shall keep a register wherein shall appear the names and addresses of each Authorised User together with the date on which each Authorised User's Certificate was issued and the period for which that Certificate will remain in force. The register shall be kept with the Secretary of the Association (P O Box 384A, Surbiton, Surrey, KT5 9YL), or subject to the Secretary of State's consent at such other address as to the Association in Committee may from time to time decide.
- 10 The fee for the issue or renewal of a Certificate of authorisation to use the Trademark is set out in Schedule 3.
- 11 Certificates shall be issued or renewed for periods of 5 years.
- 12 Applications for authorisation to use the Trademark under a Certificate and for the renewal of such authorisation shall be made on the form shown in Schedule 2(B) hereto and in the case of renewal, applications shall be made not less than 1 and not more than 2 months before the expiration of the existing Certificate.
- 13 On proof to the satisfaction of the Association in Committee of the loss or destruction of a Certificate that is in force the Association in Committee may issue a duplicate thereof.

- 14 In the event that the authorised representative of the Association in Committee shall determine that an authorised user is not complying with these Regulations then in the event that the non-compliance is minor the Association in Committee in consultation, with their authorised representative, will agree a timescale within which the non-compliance is to be corrected by the authorised user. In the circumstances, provided the authorised user confirms that the appropriate action to correct the non-compliance will be taken within the time limit set by the Association in Committee then the authorised user will have until the next routine inspection by the authorised representative to correct the non-compliance.

In the event of a disagreement between the Association in Committee and the authorised representative and the authorised user concerning the alleged non-compliance with the Regulations the matter will be referred to the Secretary of the Association who shall bring it to the attention of the Association in Committee. A subsequent ruling of the Association in Committee shall be binding upon the authorised user. The authorised user will have the right to appeal any such decision to an independent arbiter as outlined below.

In the event that the non-compliance is deemed by the Secretary of the Association to be of a sufficient nature so as to damage or be likely to damage the good reputation of STILTON cheese then an extraordinary meeting of the Association in Committee will be called. The authorised user has the right to attend that meeting.

In the event that the authorised user disagrees with any findings of an extraordinary meeting of the Association in Committee regarding non-compliance of a sufficient nature so as to damage or be likely to damage the good reputation of STILTON cheese then he has the right to appeal (to an independent arbitrator) within a period of 30 days immediately succeeding the date of such decision. The independent arbitrator shall be appointed subject to that person being agreeable to and appointed by both parties to decide on the appeal. The decision of the appointed arbitrator upon such appeal after the submission to him of such written and/or oral representations as (subject to his/her discretion to decline, receive or hear irrelevant, repetitive, or belated representations) the parties desire to make or he shall require shall be final and binding on the parties.

- 15 The Association in Committee may withdraw Authorisation to use the Trademarks by cancelling or refusing to renew a Certificate if the Authorised User concerned has committed any breach of these Regulations.

16 In the event of a dispute which has to be decided by an independent arbitrator then the parties will use the Expedited Arbitration Rules offered by the WIPO Arbitration and Mediation Centre in Geneva, Switzerland.

17 **Correct Use of Trademarks**

Authorised users shall be required to use the Trademark licensed to them under these Regulations, in the exact manner as it is registered and appears on the certificate of registration. Authorised users are required to place on every piece of packaging, labels and product literature the STILTON mark which is the subject of registration no. 721900 in all cases ensuring that the words CERTIFICATION TRADEMARK, which is part of this registered trademark, is incorporated as well.

In the event that the packaging and/or label is so small that it is impossible to accurately reproduce the word STILTON along with the words CERTIFICATION TRADEMARK subject of registration no. 721900 then the authorised user is permitted to delete from the packaging, the term "CERTIFICATION TRADEMARK" from these trademarks.

STILTON cheese that was intended to be sold as STILTON cheese but which at grading is found not to be of the required standard, must be sold as "Blue Cheese" or under some other name which makes it clear that the product is not STILTON cheese. Tape bearing the words "Blue Cheese" should be applied to the outer-box for any such product. Invoices relating to this cheese must not refer to the product as being "second grade STILTON" or "STILTON seconds" or "down-grade STILTON" or by any wording which mentions the trademark STILTON. The invoice must bear wording indicating only that the product is Blue Cheese.

18 **Guidelines for Use of the Certification Trademark**

From time-to-time the Association in Committee will issue to authorised users and prospective authorised users guidelines concerning the correct and appropriate use of the Certification Trademark Registration for the trademark STILTON. The Association in Committee will issue the guidelines to authorised users and authorised users must comply with those guidelines within 3 calendar months of being in receipt of those guidelines.

19 **Provision of Data**

Authorised users, on a monthly basis, are required to submit to the Treasurer or Secretary of the Association by the 18th day following the month to which the data refer the following information

- a) The amount of milk, in litres, which they have used in the preceding calendar month for the manufacture of White and Blue STILTON.
- b) The quantities, in kilograms, of White STILTON produced during the preceding calendar month.
- c) The quantities in kilograms of Blue STILTON cheese produced in the preceding calendar month.
- d) The quantities of white and blue Stilton sold into different parts of the market as determined from time to time by the Association in Committee.

All data supplied by authorised users shall be confidential and will not be revealed to other authorised users except in a consolidated format.

In addition to this regular provision of data, authorised users are required to keep up to date records of the amounts of STILTON cheese that they have packed in their own premises so as to show:

- the quantities of STILTON Cheese that have been delivered to the packing department for packing and
- the quantities of the said Cheese that have been despatched from the establishment

The records are made available for inspection by duly authorised persons.

20 Any Person who is aggrieved by any decision of the Association in Committee: -

- a) to refuse to issue a Certificate;
- b) to refuse to renew a Certificate; or
- c) to cancel a Certificate;

Whereby in substance the Association in Committee will refuse to certify or continue to certify his goods under the Trademark may appeal during the period of 30 days immediately succeeding the date

of such refusal or cancellation to an independent arbiter, agreeable to and appointed by both parties, to decide on the appeal. The decision of the appointed arbiter upon such appeal after the submission to him of such written and/or oral representations as (subject to his discretion to decline to receive or hear irrelevant, repetitive or belated representations) the parties desire to make or he shall require, shall be final and binding on the parties.

- 21 Provided that the Department of Trade and Industry consents thereto the Chairman of the Association may, from time to time, alter these Regulations or make new ones wholly or partly in lieu hereof but no such alteration or innovation shall affect the use by an Authorised User of the Trademark as hereinbefore described during the current term of the Certificate unless and until he has received at least 3 calendar months notice thereof in writing and until such period of notice has expired.
- 22 The Association in Committee may from time to time delegate its powers or any of them for the purposes of administering these Regulations to sub-committees or individual members of the Association or, for the purposes of making tests and inspections only, to others duly selected and appointed by resolution of the Association in Committee.
- 23 Any notice given by the Association in Committee in pursuance of any of these Regulations shall be deemed to have been duly given if sent through the post by pre-paid letter addressed to the person concerned at his address on the register referred to in Regulation 9.
- 24 All communications regarding Certificates and the Trademarks shall be addressed to the Secretary, The Stilton Cheese Makers Association, P O Box 384A, Surbiton, Surrey, KT5 9YL.

SCHEDULE 1

PRODUCT DESCRIPTION

- 1 (a) STILTON Cheese is sold in three varieties: White STILTON, Blue STILTON, Mature Blue and/or Vintage Blue STILTON. Each variety must be made from full cream pasteurised cow's milk produced (which can be standardised according to season) by dairy herds from England (at times of shortage milk may also be sourced from Wales) with no applied pressure and forming its own crust or coat.
- (b) Every reference to "full cream pasteurised cow's milk" in this Schedule shall be a reference to the use of full cream pasteurised milk from dairy herds in the area noted in Paragraph 1a above in accordance with the terms of that paragraph.

2 White STILTON Cheese

White STILTON Cheese is a white Cheese made in cylindrical form from full cream pasteurised cows milk (which can be standardised according to season) with no applied pressure and forming its own crust or coat.

The White STILTON Cheese has the following characteristics:-

- a) Flavour: a fresh clean acidic flavour.
- b) Body: Internal: uniform white colour with a flaky or crumbly open moist texture free from discolouration gas holes or chalkiness.
- External: a smooth white exterior coat free from surface mould, blemishes or mites.
- c) Shape: regular and uniform in circumference.
- d) Fat: minimum 48% milk fat in the Dry matter.
- 3 As Blue STILTON matures so its characteristics change in terms of taste and texture. Two distinct varieties of Blue STILTON are sold -

standard and mature/vintage. Typically, Blue STILTON will be graded at around 6 weeks of age and each cheese will be assessed as to its flavour, texture, body, degree of veining, shape and coat condition. Cheeses which do not meet the required standards will be rejected. Cheeses which do meet the required standards will either be selected for sale as standard Blue STILTON shortly after the initial grading, or will be allowed to mature further. Such cheeses will be subsequently re-graded to assess their suitability for sale as Mature Blue STILTON and/or Vintage Blue STILTON. The grade applied to the STILTON will thus depend on the length of time during which the cheese has been conditioned or matured. Typically the following ages will apply:

Standard	6 to 12 weeks
Mature	10 to 15 weeks
Vintage	more than 15 weeks

Actual length of maturing will vary from season to season depending on natural variations in milk composition, storage temperature and according to individual manufacturer methods. Categorisation will therefore be based primarily on flavour and body subject to the above guidelines on age.

4 Blue STILTON Cheese

Blue STILTON Cheese is a blue moulded Cheese made in cylindrical form from full cream pasteurised cows milk (which can be standardised according to season) with no applied pressure in forming its own crust or coat.

The Blue STILTON Cheese has the following characteristics:

- a) Flavour: a clean subtle flavour.
- b) Body - Internal: a uniform creamy white colour except for blue/green mould radiating from the centre with a velvety or flaky open texture free from gas holes and chalkiness.

External: forming its own slightly wrinkled crust or coat, colour variable.
- c) Shape: regular and uniform in circumference.
- d) Fat: minimum 48% milk fat in the dry matter.

5 Mature Blue/Vintage Blue STILTON

Mature Blue/Vintage Blue STILTON is a fully mature blue moulded Cheese made in cylindrical form from full cream pasteurised cows milk (which can be standardised according to season) with no applied pressure and forming its own crust or coat.

Mature Blue/ Vintage Blue STILTON has the following characteristics:

- a) Flavour: a mellow mature flavour.
- b) Body -
Internal: a uniform creamy yellow/white colour except for blue/green mould radiating from the centre with a creamy velvety texture free from gas holes and chalkiness.

External: forming its own slightly wrinkled crust or coat, colour variable.
- c) Shape: regular and uniform in circumference.
- d) Fat: minimum 48% milk fat in the dry matter.

SCHEDULE 2A

THE STILTON CHEESE MAKERS ASSOCIATION

Authorised User's Certificate No.

This is to certify that
of
is authorised up to and including the day of 20 to use
Registered Certification Trademark No. 721900 in the following forms:

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(representation of the permitted forms)

in respect of cheese subject to and in accordance with the Regulations
deposited at the Patent Office for governing the use of the said Certification
Trademark.

Dated this day of 20

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SCHEDULE 3

CERTIFICATION FEE

The annual fee for issuing and renewing a Certificate of authorisation to use the Trademark referred to in points 6 and 9 of the Regulations is as follows:

£994 per production plant (fixed inspection charge)

plus:

£826 per company (fixed administration costs)

plus

20p per 1000 litres of whole milk used in the previous calendar year for the production of STILTON cheese (variable inspection costs)

These fees may be subject to changes from one year to another.

“The Association is entitled to charge every Authorised User fees as provided in the regulations governing the certification scheme at a level to be determined from time to time by the Association which level shall not exceed that required to cover the reasonable administrative and operational expenses of the Association in respect of the certification scheme and which shall enable the certification scheme to be administered and operated satisfactorily in the interests of all the Authorised Users”.