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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182937
Party	Plaintiff General Mills IP Holdings II, LLC, General Mills, Inc.
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Date	05/29/2008
Attachments	Answer to Counterclaim.pdf (5 pages)(11273 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GENERAL MILLS, INC., and

GENERAL MILLS IP HOLDINGS II, LLC,

Opposers,

v.

FAGE DAIRY PROCESSING
INDUSTRY S.A.,

Applicant.

Opposition No. 91182937

Serial Nos. 77/037,793

77/037,808

77/037,835

77/037,851

77/037,869

77/037,897

77/037,905

77/037,924

ANSWER TO COUNTERCLAIM

Opposers General Mills IP Holdings II, LLC (“GM IP Holdings”) and Opposer General Mills, Inc. (“GMI”) for their answer to Applicant’s Counterclaim for Cancellation filed by Applicant Fage Dairy Processing Industry, S.A. (“Applicant” or “Fage”) allege as follows:

1. Opposers are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of Applicant’s Counterclaim for Cancellation, and, therefore, deny the same.

2. Opposers are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of Applicant’s Counterclaim for Cancellation, and, therefore, deny the same.

3. Opposers admit the allegations set forth in paragraph 3 of Applicant’s Counterclaim for Cancellation.

4. In response to the allegations contained in paragraph 4 of the Counterclaim for Cancellation, GM IP Holdings states that the phrase “manufacture, distribute or sell any goods”

is unclear and therefore denies the same. However, GM IP Holdings admits that it is a holding company and that as part of its operations it licenses the use of intellectual property to related entities which use the intellectual property in connection with the sale and distribution of products, all of which inure to the benefit of GM IP Holdings.

5. Opposers admit the allegations set forth in paragraph 5 of Applicant's Counterclaim for Cancellation.

6. Opposers affirmatively state that Opposers' Consolidated Notice of Opposition speaks for itself and deny the allegations set forth in paragraph 6 of Applicant's Counterclaim for Cancellation to the extent that they purport to limit the bases for Opposers' Consolidated Notice of Opposition or contradict the same.

7. Opposers deny the allegations set forth in paragraph 7 of Applicant's Counterclaim for Cancellation and further state that Opposer GM IP Holdings, a wholly owned subsidiary of Opposer GMI, has licensed use of the TOTAL Marks to related company General Mills Cereals, LLC ("GMC"), another wholly owned subsidiary of Opposer GMI as affirmatively averred in Opposers' Consolidated Notice of Opposition.

8. Opposers deny the allegations set forth in paragraph 8 of Applicant's Counterclaim for Cancellation.

9. Opposers deny the allegations set forth in paragraph 9 of Applicant's Counterclaim for Cancellation.

10. Opposers deny the allegations set forth in paragraph 10 of Applicant's Counterclaim for Cancellation.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Applicant's Counterclaim for Cancellation fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Laches, Waiver and/or Estoppel)

Applicant's claims are barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

Opposers reserve the right to assert additional affirmative defenses in the event that discovery indicates they would be appropriate.

WHEREFORE, Opposers General Mills, Inc. and General Mills IP Holdings II, LLC believe that they would be damaged by registration of Applicant's FAGE TOTAL ALL NATURAL GREEK STRAINED YOGURT ("All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL 5% ALL NATURAL GREEK STRAINED YOGURT ("5%" and "All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL 2% ALL NATURAL GREEK STRAINED YOGURT ("2%" and "All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL 0% ALL NATURAL-NONFAT GREEK STRAINED YOGURT ("0%" and "All Natural-Nonfat Greek Strained Yogurt" disclaimed), FAGE TOTAL WITH HONEY ALL NATURAL GREEK STRAINED YOGURT ("With Honey All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL WITH STRAWBERRY ALL NATURAL GREEK STRAINED YOGURT ("With Strawberry All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL 2% WITH HONEY ALL NATURAL GREEK STRAINED YOGURT ("2%" and "With Honey All Natural Greek Strained Yogurt" disclaimed), FAGE TOTAL WITH CHERRY ALL NATURAL GREEK

STRAINED YOGURT (“With Cherry All Natural Greek Strained Yogurt” disclaimed) marks and pray that application Serial Nos. 77/037,793; 77/037,808; 77/037,835; 77/037,85; 77/037,869; 77/037,897; 77/037,905; and 77/037,924 be rejected accordingly, that no registration be issued thereon to Applicant, that Applicant’s Counterclaim for Cancellation be dismissed, and that this consolidated opposition be sustained in favor of Opposers.

Dated: May 29, 2008

FAEGRE & BENSON LLP

s/Felicia J. Boyd

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2008, a copy of the foregoing Answer to Counterclaim was served on counsel of record for Applicant as follows:

BY OVERNIGHT MAIL

Virginia R. Richard, Esq.
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s/Felicia J. Boyd

Felicia J. Boyd