

ESTTA Tracking number: **ESTTA278073**

Filing date: **04/14/2009**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Healh by Chocolate, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	1009 Park Avenue, 9A New York, NY 10028 UNITED STATES		

Correspondence information	Patrick J. Thomas Managing Member Healh by Chocolate, LLC 1009 Park Avenue, 9A New York, NY 10028 UNITED STATES pjthom66@gmail.com Phone:9172142935
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### Applicant Information

Application No	77575332	Publication date	03/17/2009
Opposition Filing Date	04/14/2009	Opposition Period Ends	04/16/2009
Applicant	Healthy Chocolate Company, Inc. 1920 Northgate Boulevard Suite A-5 Sarasota, FL 34234 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Chocolate
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3002670	Application Date	08/07/2003
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	HEALTH BY CHOCOLATE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 030. First use: First Use: 2003/11/01 First Use In Commerce: 2003/11/01 Chocolate bars, chocolate covered nuts, novelty chocolate candies, cocoa drink mix

Attachments	HealthyChocolateOpposition.pdf ( 3 pages )(12033 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Patrick J. Thomas/
Name	Patrick J. Thomas
Date	04/14/2009

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

In the matter of trademark application Serial No. 77575332

For the mark Healthy Chocolate

Published in the Official Gazette on March 17, 2009

Health by Chocolate, LLC

v.

Healthy Chocolate Company, Inc.

NOTICE OF OPPOSITION

Health by Chocolate, LLC (“Opposer”), a Delaware limited liability company with the address of 1009 Park Avenue, Suite 9A, New York, NY 10028, believes that it will be damaged by the registration of the mark HEALTHY CHOCOLATE (“Applicant Mark”) as shown in Application Serial No. 77575332 filed on September 22, 2008 by Healthy Chocolate Company, Inc. (hereinafter “Applicant”), for “Candy bars, (chocolate); Chips, (chocolate); Chocolate candies; Chocolate chips”, and hereby opposes same.

The grounds for opposition are as follows:

(1) Opposer is a Delaware limited liability company, with its principal place of business located at 1009 Park Avenue, 9A, New York, NY 10028. Opposer markets branded chocolate products, in connection with which it has continuously used, since at least as early as 2003, the trademark “Health by Chocolate” (hereinafter, the “Health by Chocolate Trademark(s)”).

(2) On February 19 2009, Opposer acquired all substantially all of the assets related to the business of HEALTH BY CHOCOLATE from E.B. Botanicals LLC, a New Jersey limited liability company.

(3) Pursuant to the terms and conditions of said acquisition, Opposer now owns U.S. Trademark Registration No. 3002670 for the mark HEALTH BY

CHOCOLATE, registered on September 27, 2005 in connection with “Chocolate bars, chocolate covered nuts, novelty chocolate candies, cocoa drink mix” in International Class 30. Registration No. 3002670 is valid, subsisting and incontestable.

(4) In addition and pursuant to such acquisition, Opposer owns U.S. Trademark Registration No. 3135664 for the mark HEALTH BY CHOCOLATE, registered on August 29, 2006 in connection with “Nutritional supplements; Powdered nutritional supplement drink mix” in International Class 5. Registration No. 3135664 is valid, subsisting and incontestable.

(5) Opposer’s HEALTH BY CHOCOLATE Trademark is inherently distinctive and unique.

(6) In connection with the HEALTH BY CHOCOLATE Trademark, Opposer has extensively advertised and promoted the products offered under the trademark. Considerable time, effort and money have been spent promoting goods provided under the HEALTH BY CHOCOLATE Trademark in the United States including advertising, disseminating promotional materials, and the operation of the website referred to below.

(7) Opposer’s HEALTH BY CHOCOLATE Trademark and the goods sold thereunder, have also been the subject of widespread publicity from a variety of well-known regional and national news sources, including, among others: Elle, Justine, FitnessRx, OK Magazine and WebMD. Opposer also features its HEALTH BY CHOCOLATE Trademark on its website, <http://www.healthbychocolate.com>.

(8) As a result of the continuous sales, advertising and promotion by Opposer of products offered under or bearing the HEALTH BY CHOCOLATE Trademark, this mark has become exclusively associated with Opposer. Further, as a result of this extensive use, Opposer has acquired valuable goodwill in the HEALTH BY CHOCOLATE Trademark throughout the country.

(9) Applicant has applied to register mark HEALTHY CHOCOLATE in connection with “Chocolate” in International Class 30, a class already occupied by Opposer’s similar mark for the same and related goods.

(10) Applicant's Mark so resembles Opposer's HEALTH BY CHOCOLATE Trademark in appearance, sound and overall commercial impression it imparts on consumers, that it is likely to cause confusion, mistake or deception among the buying public as to source if registered with the goods identified in the application opposed herein.

(11) As the owner of an incontestable registration, Opposer is entitled to protection against registration of a confusingly similar mark in connection with related goods.

(12) Opposer has not authorized or consented Applicant's use or registration of Applicant's Mark in the United States.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that registration of the mark HEALTHY CHOCOLATE, Application Serial No. 77575332 for the goods specified in such application be refused and that no registration should issue thereon to Applicant.

Respectfully submitted,  
Opposer:

/Patrick J. Thomas/  
By: Patrick J. Thomas  
Title: Managing Member

Health by Chocolate, LLC  
1009 Park Avenue, 9A  
New York, NY 10028

Dated: April 10, 2009