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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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Submission	Motion to Consolidate
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Signature	/s Elizabeth Cowan Wright/
Date	07/08/2008
Attachments	Joint Motion to Consolidate.pdf ( 6 pages )(26438 bytes )

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

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GENERAL MILLS, INC. and	:	
	:	
GENERAL MILLS IP	:	
HOLDINGS II, LLC,	:	
Opposers,	:	Opposition No. 91118482 (parent)
	:	Opposition No. 91118950
	:	Opposition No. 91155075
		and
		Opposition No. 91182937 (parent)
v.	:	
	:	
FAGE DAIRY PROCESSING	:	<b><u>JOINT MOTION TO CONSOLIDATE</u></b>
INDUSTRY, S.A.,	:	
	:	
Applicant.	:	
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Opposers General Mills, Inc. and General Mills IP Holdings II, LLC (collectively “General Mills”) and Applicant Fage Dairy Processing Industry, S.A. (“Fage”) hereby jointly move to consolidate two related Consolidated Oppositions. The pending Oppositions relate to a series of pending applications for marks filed by Fage for use in connection with yogurt and other related products. The applications at issue and their corresponding opposition proceedings are summarized in the chart set forth below:

Application Serial Number	Mark	Opposition Number	Consolidated Opposition
75/597291	TOTAL SHEEPS' YOGHURT & Design	91118482 (filed June 1, 2000)	Opposition I (91118482 is parent)
75/597292	TOTAL ΦΑΓΕ & Design	91118950 (filed August 24, 2000)	Opposition I
76/016809	TOTAL TZATZIKI AUTHENTIC GREEK & Design	91155075 (filed May 17, 2002)	Opposition I

<b>Application Serial Number</b>	<b>Mark</b>	<b>Opposition Number</b>	<b>Consolidated Opposition</b>
76/016810	TOTAL LIGHT THE AUTHENTIC GREEK STRAINED YOGHURT & Design	91155075 (filed May 23, 2002)	Opposition I
76/016811	TOTAL WITH GREEK HONEY THE AUTHENTIC GREEK STRAINED YOGURT & Design	91155075 (filed July 25, 2002)	Opposition I
76/016812	TOTAL 2% & Design	91155075 (filed August 10, 2002)	Opposition I
76/016813	TOTAL CHERRY THE AUTHENTIC GREEK STRAINED YOGURT & Design	91155075 (filed May 17, 2002)	Opposition I
77/037793	FAGE TOTAL ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II (91182937 is parent)
77/037808	FAGE TOTAL 5% ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II
77/037835	FAGE TOTAL 2% ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II
77/037851	FAGE TOTAL 0% ALL NATURAL-NONFAT GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II
77/037869	FAGE TOTAL WITH HONEY ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II
77/037897	FAGE TOTAL WITH STRAWBERRY ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II

<b>Application Serial Number</b>	<b>Mark</b>	<b>Opposition Number</b>	<b>Consolidated Opposition</b>
77/037905	FAGE TOTAL 2% WITH HONEY ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II
77/037924	FAGE TOTAL WITH CHERRY ALL NATURAL GREEK STRAINED YOGURT & Design	91182937 (filed Nov. 6, 2006)	Opposition II

Oppositions 91118482, 91118950, and 91155075 are presently consolidated under the parent case Opposition 91118482 (“Opposition I”). Opposition 91182937 (“Opposition II”) is the second, later-filed opposition. Oppositions I and II are currently pending before the Board on separate discovery and trial tracks even though the proceedings share a common nucleus of facts, witnesses, documents, and law.

The parties believe that further consolidation of Oppositions I and II into a single opposition proceeding will save time and expense for the parties and the Board. Stipulations simultaneously filed herewith by the parties have already narrowed the issues that will be raised in each opposition. As a result of these stipulations, the Consolidated Oppositions now involve common facts and legal issues.

In particular, General Mills has agreed to amend its Notice of Opposition in Opposition I to withdraw its claims of fraud directed to Fage's U.S. Application Serial Nos. 76/016,809, 76/016810, 76/016,811, 76/016,812 and 76/016,813. Fage has agreed that General Mills has standing to proceed in the opposition proceedings and to withdraw its counterclaims for abandonment of General Mills' registrations for TOTAL marks cited as the basis of both Consolidated Oppositions. General Mills has also agreed that Fage may amend

the description of goods in connection with U.S. Application Serial Nos. 76/016,809, 76/016810, 76/016,811, 76/016,812 and 76/016,813 at issue in Opposition I .

As a result, trial for both Consolidated Oppositions will center on whether Fage’s applications for the marks set forth on the chart above are likely to lead to consumer confusion, mistake or deception with General Mills’ TOTAL® mark or are likely to cause dilution of General Mills' TOTAL mark. Proof regarding these core issues will necessarily involve overlapping evidence, testimony, and facts. Thus, the parties believe that it would benefit the Board to consider these issues at one time.

Fage and General Mills have further agreed to an amended scheduling order that allows for a consolidated trial of both Consolidated Oppositions. The parties’ proposed scheduling order briefly delays the deadlines in Opposition I but also accelerates the deadlines in Opposition II. The relevant deadlines are set forth in the following chart:

<b>Deadline</b>	<b>Opposition I Deadline</b>	<b>Opposition II Deadline</b>	<b>Proposed Consolidated Deadline</b>
Expert Disclosures		December 4, 2008	October 2, 2008
Close of Discovery	July 1, 2008	January 3, 2009	November 1, 2008
Plaintiff’s Pretrial Disclosures		February 17, 2009	December 15, 2008
Plaintiff’s Testimony Period	September 29, 2008	April 3, 2009	January 30, 2009
Defendant’s Pretrial Disclosures		April 18, 2009	February 14, 2009
Defendant’s Testimony Period	January 27, 2009	June 2, 2009	March 31, 2009
Plaintiff’s Rebuttal Disclosures		June 17, 2009	April 15, 2009
Plaintiff’s Rebuttal Testimony	March 13, 2009		May 15, 2009
Plaintiff’s Brief	May 12, 2009	November 14, 2009	July 14, 2009

Deadline	Opposition I Deadline	Opposition II Deadline	Proposed Consolidated Deadline
Defendant's Brief	July 11, 2009	December 14, 2009	August 13, 2009
Reply Brief	July 26, 2009	January 13, 2010	August 28, 2009

This proposed schedule differs from that set forth in the parties' Joint Motion to Extend the Discovery/Testimony Periods filed on June 30, 2008 in that the close of discovery and subsequent deadlines in this proposed schedule occur 30 days later than the dates set forth in the June 30, 2008 Motion. The parties agreed to this modification of the proposed schedule to avoid holiday scheduling conflicts during the Plaintiff's Testimony Period.

In short, the parties jointly urge the Board to consolidate the two Consolidated Oppositions to streamline the remaining proceedings, facilitate a global resolution of this dispute, avoid duplicative trials, and to conserve the Board's administrative and judicial resources. General Mills and Fage respectfully request an Order consolidating Opposition I and Opposition II as set forth above.

Dated: July 8, 2008

By: s/Elizabeth Cowan Wright

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2008, a copy of the foregoing Joint Motion to Consolidate was served on counsel of record for Applicant as follows:

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