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Filing date: **04/21/2008**

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

Proceeding	91182937
Party	Defendant Fage Dairy Processing Industry S.A.
Correspondence Address	Virginia R. Richard WINSTON & STRAWN LLP 200 PARK AVE NEW YORK, NY 10166-0005 UNITED STATES vrichard@winston.com, trademarkny@winston.com
Submission	Answer and Counterclaim
Filer's Name	Virginia R. Richard
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Signature	/W&S/
Date	04/21/2008
Attachments	Opp. No. 91182937 - Answer to Consolidated Notice of Opposition.pdf (10 pages)(347515 bytes)

Registrations Subject to Cancellation

Registration No	724897	Registration date	12/05/1961
Registrant	General Mills, Inc. 1 GENERAL MILLS BLVD. Minneapolis, MN 55426 UNITED STATES		
Goods/Services Subject to Cancellation	Class U046 (International Class 030). First Use: 1961/02/23 , First Use In Commerce: 1961/02/23 Goods/Services:		
Grounds for Cancellation	The registered mark has been abandoned.		
Registration No	1119067	Registration date	05/29/1979
Registrant	GENERAL MILLS IP HOLDINGS II, LLC NUMBER ONE GENERAL MILLS BOULEVARD MINNEAPOLIS, MN 55426 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 1961/00/00 , First Use In Commerce: 1961/00/00 Goods/Services:		
Grounds for Cancellation	The registered mark has been abandoned.		
Registration No	1394264	Registration date	05/20/1986
Registrant	GENERAL MILLS IP HOLDINGS II, LLC Number One General Mills Blvd. MINNEAPOLIS, MN 55426 UNITED STATES		
Goods/Services Subject to Cancellation	Class 030. First Use: 1961/02/23 , First Use In Commerce: 1961/02/23 Goods/Services:		

Grounds for Cancellation	The registered mark has been abandoned.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X		
GENERAL MILLS, INC. and	:	
	:	
GENERAL MILLS IP	:	
HOLDINGS II, LLC,	:	
Opposers,	:	Opposition No. 91182937
	:	
v.	:	
	:	
FAGE DAIRY PROCESSING	:	
INDUSTRY, S.A.,	:	
	:	
Applicant.	:	
-----X		

**ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION AND
REQUEST FOR SUSPENSION AND COUNTERCLAIM**

Applicant, Fage Dairy Processing Industry, S.A. ("Applicant" and/or "Fage"), for its Answer to the Consolidated Notice of Opposition And Request For Suspension ("Consolidated Notice of Opposition") filed by General Mills, Inc. and General Mills IP Holdings II, LLC, alleges as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Consolidated Notice of Opposition, and, therefore, denies same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Consolidated Notice of Opposition, and, therefore, denies same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Consolidated Notice of Opposition, and, therefore, denies same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Consolidated Notice of Opposition, and, therefore, denies same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Consolidated Notice of Opposition, and, therefore, denies same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Consolidated Notice of Opposition, and, therefore, denies same.

7. Applicant denies the allegations set forth in paragraph 7 of the Consolidated Notice of Opposition.

8. Applicant admits that it is a Greek corporation with a place of business located at 35 Hermou Street Metamorfossi, Athens, Greece 14452 and denies the remaining allegations set forth in paragraph 8 of the Consolidated Notice of Opposition.

9. Applicant admits the allegations set forth in paragraph 9 of the Consolidated Notice of Opposition.

Likelihood of Confusion

10. The allegations set forth in Paragraph 10 of the Consolidated Notice of Opposition constitute argument of counsel, not facts, and therefore no response is required. To

the extent that a response is deemed required, Applicant denies the allegations set forth in Paragraph 10 of the Consolidated Notice of Opposition.

11. The allegations set forth in Paragraph 11 of the Consolidated Notice of Opposition constitute argument of counsel, not facts, and therefore no response is required. To the extent that a response is deemed required, Applicant denies the allegations set forth in Paragraph 11 of the Consolidated Notice of Opposition.

12. The allegations set forth in Paragraph 12 of the Consolidated Notice of Opposition constitute argument of counsel, not facts, and therefore no response is required. To the extent that a response is deemed required, Applicant denies the allegations set forth in Paragraph 12 of the Consolidated Notice of Opposition.

Likelihood of Trademark Dilution

13. Applicant denies the allegations set forth in paragraph 13 of the Consolidated Notice of Opposition.

14. Applicant denies the allegations set forth in paragraph 14 of the Consolidated Notice of Opposition.

15. Applicant objects to paragraph 15 of the Consolidated Notice of Opposition as vague, ambiguous and unintelligible, as the paragraph states "and not abandoned" and it is unclear from the paragraph what allegation is being made by Opposers and is therefore not understood. To the extent that a response to paragraph 15 of the Consolidated Notice of Opposition is required, Applicant denies the allegations set forth therein.

FIRST AFFIRMATIVE DEFENSE

16. The Consolidated Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

17. Opposers have acquiesced in Applicant's use of its FAGE TOTAL combination marks, including the mark AUTHENTIC GREEK FETA TOTAL FAGE & Design.

18. Opposers did not oppose registration of Applicant's mark AUTHENTIC GREEK FETA TOTAL FAGE & Design.

19. Opposers did not petition to cancel U.S. Trademark Registration No. 2,348,306 for AUTHENTIC GREEK FETA TOTAL FAGE & Design.

20. Applicant's mark AUTHENTIC GREEK FETA TOTAL FAGE & Design is the subject of incontestable U.S. Trademark Registration No. 2,348,306.

21. Opposers' acquiescence to Applicant's use of a FAGE TOTAL combination mark, namely, AUTHENTIC GREEK FETA TOTAL FAGE & Design bars Opposers' claims in this proceeding.

22. Applicant's incontestable U.S. Trademark Registration No. 2,348,306 for AUTHENTIC GREEK FETA TOTAL FAGE & Design bars Opposers' claims of likelihood of dilution in this proceeding.

23. In addition, Opposers have acquiesced to Applicant's use of its FAGE TOTAL combination marks in the United States for over nine years.

24. Opposers' acquiescence to Applicant's use of its FAGE TOTAL combination marks in the United states bars Opposers' claim of damage in this proceeding

25. Furthermore, Opposers have acquiesced in significant third party use of the mark TOTAL, including but not limited to third party Bally Total Fitness Corporation's ("Bally Total") use of BALLY TOTAL FITNESS and registration of the mark BALLY TOTAL FITNESS for food products including yogurt and cereal products.

26. Specifically, in 2004, Opposer General Mills, Inc. defaulted in T.T.A.B. Opposition No. 91152441, entitled General Mills, Inc. v. Bally Total Fitness Corporation, in which General Mills, Inc. opposed Bally Total's U.S. Application Serial No. 75/799,114 for BALLY TOTAL FITNESS for, *inter alia*, yogurt and cereal products. Bally Total's Application Serial No. 75/799,114 matured into U.S. Registration No. 3,123,889 on August 1, 2006.

27. Upon information and belief, Opposers' acquiescence in Bally Total's use of the mark BALLY TOTAL FITNESS for food products was not limited to General Mills, Inc.'s default before the Trademark Trial and Appeal Board. Upon information and belief, subsequent to Opposer General Mills, Inc.'s default in the Bally Total proceeding, it entered into a relationship with Bally Total pursuant to which it marketed Bally Total gym memberships on boxes for TOTAL cereal.

28. Opposers acquiesced in Bally Total's use of TOTAL and reaped a benefit from a third party use against which Opposer, General Mills, Inc. had instituted litigation one year earlier.

29. Through Opposers' acquiescence to third party use of TOTAL combination marks for food products, including but not limited to the use and registration of the mark BALLY TOTAL FITNESS for cereal and yogurt products, Opposers have abandoned any alleged rights one or both of them may have had in the mark TOTAL for cereal.

THIRD AFFIRMATIVE DEFENSE

30. Opposer General Mills, Inc. has no standing to pursue any claim alleged in this proceeding.

31. Upon information and belief, on or around May 1, 2002, General Mills, Inc. assigned its entire interest in U.S. Trademark Registration Nos. 724,897, 1,119,067 and 1,394,264 for the TOTAL mark to General Mills IP Holdings II, LLC (hereinafter "GM Holding Company").

32. Upon information and belief, GM Holding Company is the record owner of U.S. Trademark Registration Nos. 724,897, 1,119,067 and 1,394,264.

33. Upon information and belief, General Mills, Inc. is not the owner of U.S. Trademark Registration Nos. 724,897, 1,119,067 and 1,394,264, does not use the TOTAL mark and is not licensed to use the TOTAL mark.

34. Upon information and belief, General Mills, Inc. and GM Holding Company are not related companies within the meaning of 15 U.S.C. § 1055 and § 1127.

35. As General Mills, Inc. has no interest in the TOTAL mark either through ownership, use or as a related company, it is barred from pursuing any of the claims alleged in this proceeding.

WHEREFORE, Applicant Fage Dairy Processing Industry, S.A. prays that the Board enter judgment against Opposers, General Mills, Inc. and General Mills IP Holdings II, LLC, dismissing the Consolidated Notice of Opposition and that Applicant's Application Serial Nos. 77/037,793, 77/037,808, 77/037,835, 77/037,851, 77/037,869, 77/037,897, 77/037,905 and 77/037,924 be approved for publication.

COUNTERCLAIM FOR CANCELLATION

1. Counterclaim Petitioner Fage Dairy Processing Industry, S.A. is a corporation organized and existing under the laws of Greece, with a principal place of business of 35, Hermou Street Metamorfossi, Athens GR-14452, Greece.

2. Counterclaim Petitioner is in the business of manufacturing and selling dairy products on a worldwide basis under numerous marks. In the United States, Counterclaim Petitioner uses the marks FAGE TOTAL ALL NATURAL GREEK STRAINED YOGURT, FAGE TOTAL 5% ALL NATURAL GREEK STRAINED YOGURT, FAGE TOTAL 2% ALL NATURAL GREEK STRAINED YOGURT, FAGE TOTAL 0% ALL NATURAL-NON-FAT GREEK STRAINED YOGURT, FAGE TOTAL WITH HONEY ALL NATURAL GREEK STRAINED YOGURT, FAGE TOTAL WITH STRAWBERRY ALL NATURAL GREEK STRAINED YOGURT, FAGE TOTAL 2% WITH HONEY ALL NATURAL GREEK STRAINED YOGURT AND FAGE TOTAL WITH CHERRY ALL NATURAL GREEK STRAINED YOGURT (hereinafter, the "FAGE TOTAL Marks").

3. Upon information and belief, Counterclaim Registrant GM Holding Company is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business of Number One General Mills Boulevard, Minneapolis, Minnesota 55426.

4. Upon information and belief, GM Holding Company does not manufacture, distribute or sell any goods.

5. Upon information and belief, GM Holding Company is the record owner of U.S. Registration Nos. 724,897, 1,119,067 and 1,394,264 for the mark TOTAL, by virtue of an assignment of the foregoing registrations by Opposer, General Mills on or around May 1, 2002.

6. Each and every one of the foregoing registrations alleged to be owned by GM Holding Company has been asserted as the basis for GM Holding Company's Consolidated Notice of Opposition against the registration of Applicant's FAGE TOTAL Marks on the grounds that Applicant's FAGE TOTAL Marks are allegedly confusingly similar to GM Holding Company's registered marks.

7. Upon information and belief, GM Holding Company has not used any of the above-listed registered marks in commerce for at least five years.

8. Upon information and belief, GM Holding Company has made no use of any TOTAL mark in commerce.

9. Upon information and belief, GM Holding Company has failed to exercise control over the nature and quality of the goods sold under the TOTAL mark by any entity.

10. In view of the foregoing, GM Holding Company has abandoned the marks which are the subjects of U.S. Registration Nos. 724,897, 1,119,067 and 1,394,264.

WHEREFORE, Counterclaim Petitioner Fage Dairy Processing Industry, S.A. prays that (i) the Consolidated Notice of Opposition And Request for Suspension be dismissed, (ii) Opposers' request for suspension be denied, (iii) Counterclaim Petitioner's counterclaim for cancellation be sustained; and (iv) U.S. Registration Nos. 724,897, 1,119,067 and 1,394,264 be cancelled.

REQUEST FOR SUSPENSION

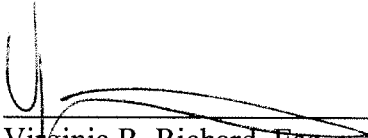
Applicant respectfully submits that Opposers' request for suspension should be denied. In its Consolidated Notice of Opposition And Request For Suspension, Opposers bring Opposition Nos. 91155075, 91/118482 and 91/118950 (the "Prior Oppositions") to the Board's

attention and request that the above-captioned Opposition proceeding be suspended concurrently with the Prior Oppositions.

On June 22, 2007, Opposers' filed a Motion For Partial Summary Judgment On Counts 13-21 Of The Second Amended Notice Of Opposition ("Motion For Partial Summary Judgment") in the Prior Oppositions, alleging that the applications at issue in the Prior Oppositions contained fraudulent representations. Thereafter, on July 23, 2007, the Board suspended the Prior Oppositions pending the outcome of Opposers Motion For Partial Summary Judgment. On January 11, 2008, Applicant filed its Opposition To Opposers' Motion For Partial Summary Judgment. Opposers filed a Reply on January 29, 2008.

The pending motion in the Prior Oppositions has no bearing on any of the claims alleged or issues presented in the above-captioned Opposition proceeding. Therefore, Applicant respectfully requests that Opposers' request for suspension of Opposition No. 91182937 be denied.

Dated: April 21, 2008

By: 
Virginia R. Richard, Esq.
Sanjana Chopra, Esq.
Katherine M. Todd, Esq.
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166

Attorneys for Applicant/Counterclaim Petitioner
FAGE DAIRY PROCESSING INDUSTRY, S.A.

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2008, a copy of the foregoing Consolidated Notice of Opposition And Request for Suspension was served on counsel of record for Opposers as follows:

BY FIRST CLASS MAIL

Felicia J. Boyd, Esq.
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901



Denise Bolden