

ESTTA Tracking number: **ESTTA452799**

Filing date: **01/24/2012**

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 parties oppose registration of the indicated application.

Opposers Information

Name	General Mills IP Holdings II, LLC
Granted to Date of previous extension	01/25/2012
Address	Number One General Mills Blvd. Minneapolis, MN 55426 UNITED STATES

Name	General Mills, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	Number One General Mills Boulevard Minneapolis, MN 55426 UNITED STATES		

Attorney information	Richard J. Groos Fulbright & Jaworski L.L.P. 98 San Jacinto Blvd., Suite 1100 Austin, TX 78701 UNITED STATES aotrademark@fulbright.com, rgroos@fulbright.com, bress@fulbright.com, cweimer@fulbright.com, kpfertner@fulbright.com Phone:512.474.5201
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Applicant Information

Application No	79095832	Publication date	09/27/2011
Opposition Filing Date	01/24/2012	Opposition Period Ends	01/25/2012
International Registration No.	1073190	International Registration Date	02/10/2011
Applicant	Healthy by Nature Ltd 35 Becksie Scopwick Lincoln LN4 3NX, UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Table top natural sweetener
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Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	724897	Application Date	03/09/1961
Registration Date	12/05/1961	Foreign Priority Date	NONE
Word Mark	TOTAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1961/02/23 First Use In Commerce: 1961/02/23 Wheat Flakes		

U.S. Registration No.	1394264	Application Date	10/15/1985
Registration Date	05/20/1986	Foreign Priority Date	NONE
Word Mark	TOTAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1961/02/23 First Use In Commerce: 1961/02/23 READY TO EAT BREAKFAST CEREAL		

Attachments	GMIL.T0067 Notice of Opposition.pdf (16 pages)(972702 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	/Richard J. Groos/
Name	Richard J. Groos
Date	01/24/2012

**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 INC.)	Opposition No. _____
)	
v.)	Serial No. 79/095,832
)	
HEALTHY BY NATURE LTD)	Mark: TOTAL SWEET
)	Standard Character Mark

NOTICE OF OPPOSITION

Opposer General Mills, Inc. (“GMI”), a Delaware corporation having its principal place of business located at Number One General Mills Boulevard, Minneapolis, Minnesota 55426, and General Mills IP Holdings II, LLC (“GMI Holdings”), a Delaware limited liability company having its principal place of business located at Number One General Mills Boulevard, Minneapolis, Minnesota 55426 (collectively, “General Mills”), believe they will be damaged by registration of Application Serial No. 79/095,832 (the “Application”) in the name of Healthy by Nature Ltd. (“Applicant”) for the standard character mark TOTAL SWEET, and hereby oppose the same. The grounds for opposition are as follows:

1. General Mills is now and has for many years engaged in the manufacture, distribution, and sale of a wide variety of food products, including breakfast cereals and related goods and services.
2. General Mills is the creator of the TOTAL® breakfast cereal. Since 1961, General Mills has continuously marketed ready-to-eat cereal under the TOTAL Mark. See Exhibit A for an example of the TOTAL Mark on said cereal’s packaging.
3. GMI Holdings is the owner of and will rely herein upon following federal registrations for the TOTAL Mark (collectively, the "TOTAL Registrations"): U.S. Reg. No. 724,897 for TOTAL for "wheat flakes" (reg. date 12/6/1961) and U.S. Reg. No. 1,394,264 for TOTAL for "ready-to-eat breakfast cereal" (reg. date 5/20/1986), the same being valid and subsisting, unrevoked, and uncanceled:

Mark	Reg. No.	Reg. Date	Goods/Services - Class
TOTAL	724,897	12/6/1961	“Wheat flakes,” in Class 030 Used in Interstate Commerce at least as early as 02/23/1961
TOTAL	1,394,264	5/20/1986	Ready-to-eat breakfast cereal, in Class 030 Used in Interstate Commerce at least as early as 02/23/1961

Printouts from the USPTO TARR and ASSIGN databases for each of these registrations are attached as Exhibits B and C, and are hereby made of record in this proceeding.

4. The TOTAL Registrations are incontestable under 15 U.S.C. § 1065.
5. General Mills has continuously used the TOTAL Mark in interstate commerce in connection with ready-to-eat cereal since as early as 1961. Accordingly, General Mills has superior and paramount rights as compared to Applicant.
6. For decades, General Mills has made large investments in the promotion and advertising of TOTAL cereal. Since 1961, General Mills has spent hundreds of millions of dollars in advertising the TOTAL brand. General Mills has advertised TOTAL cereal in every conceivable type of available media, including national television, radio, magazines, internet, newspapers and coupons. Advertising campaigns for TOTAL, such as the “Stacking Bowls” campaign, have achieved iconic status in American culture, even spawning a popular Saturday Day Night Live parody.
7. The enormous magnitude of sales and advertising of TOTAL brand cereal over the last 50 years has given the TOTAL mark the highest level of commercial recognition and strength. The TOTAL mark embodies the inestimable goodwill that TOTAL brand cereal enjoys in the marketplace.
8. Due to the popularity of the TOTAL brand, General Mills has extended it to various different products over the last 50 years. Currently, General Mills offers TOTAL brand

cereal in the following flavors: Whole Grain; Honey Almond Flax; Cinnamon Crunch; Raisin Bran; and Cranberry Crunch.

9. As a result of General Mills' enormous investment in the TOTAL brand, the TOTAL Mark became famous long before any priority date upon which Applicant can rely.
10. Applicant's Serial No. 79/095,832 seeks to register the alleged TOTAL SWEET mark in association with "[t]able top natural sweetener" in International Class 30.
11. Applicant's alleged TOTAL SWEET Mark wholly incorporates General Mills' famous TOTAL Mark, adding only the descriptive term "Sweet."
12. Applicant's alleged TOTAL SWEET mark is confusingly similar to General Mills' famous TOTAL Mark.
13. On information and belief, Applicant has not used its alleged TOTAL SWEET mark in the United States prior to 1961.
14. On information and belief, Applicant has not used its alleged TOTAL SWEET mark in interstate commerce in the United States to date.
15. Considering General Mills' established prior usage of its famous TOTAL Mark, vis-à-vis Applicant's highly similar mark, General Mills believes, and therefore avers, that Applicant's use and registration of the mark in its Application will damage General Mills for the following reasons, among others:
 - a) Consumers and persons in the trade will be confused as to the source or origin of the parties' respective goods;
 - b) Consumers and persons in the trade will incorrectly assume that Applicant's goods are associated with, endorsed by, or in some way related to General Mills and/or TOTAL®.
 - c) Registration of Applicant's mark and use of Applicant's mark is likely to dilute General Mills' famous TOTAL Mark.
16. Registration of the mark contained in the Application will result in damage to General Mills under the provisions of §§ 2(d) and 43(c) of the Lanham Act, (15 U.S.C. §§ 1052(d), 1125(c), respectively), pursuant to the allegations stated above.

WHEREFORE, General Mills respectfully requests that the registrations sought by the Applicant be refused in accordance with the provisions of § 2(d) of the Lanham Act (15 U.S.C. § 1052(d)), and 43(c) of the Lanham Act (15 U.S.C. § 1125(c)), that no registrations be issued, and that this Opposition be sustained in its favor.

Respectfully submitted,

Dated: January 24, 2012

By:



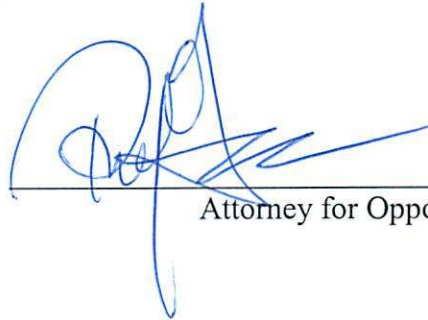
Richard J. Groos
Brandon M. Ress
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FULBRIGHT & JAWORSKI L.L.P.
98 San Jacinto Blvd., Suite 1100
Austin, Texas 78701
Tel: 512.474.5201
Fax: 512.536.4598

Attorneys for Opposers, General Mills,
Inc. and General Mills IP Holdings II,
LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2012, a copy of the foregoing Notice of Opposition was served on Applicant via International First Class Mail to Applicant at the correspondence address of record, as follows:

Healthy by Nature Ltd
35 Becksde
Scopwick
Lincoln LN4 3NX
UNITED KINGDOM

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Attorney for Opposer

EXHIBIT A

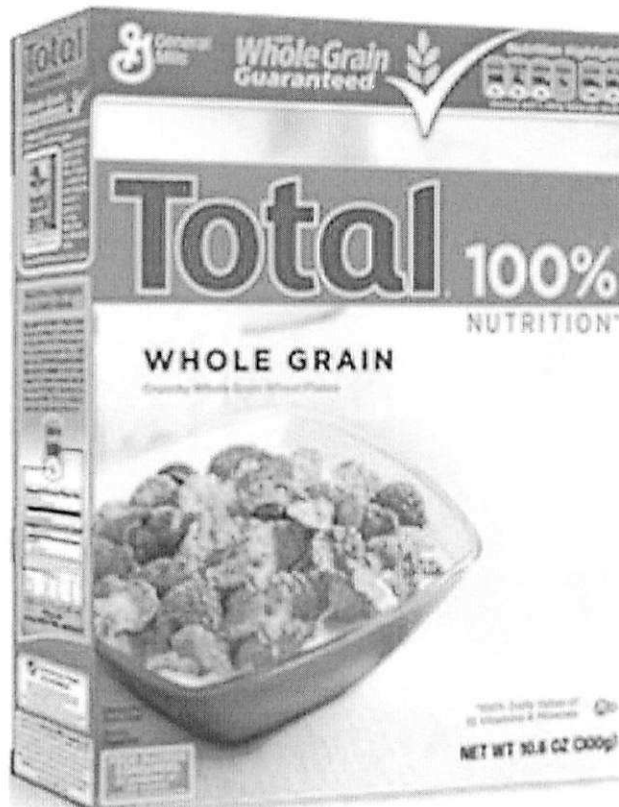


EXHIBIT B

This page was generated by the TARR system on 2012-01-20 18:36:57 ET

Serial Number: 72115229 Assignment Information Trademark Document Retrieval

Registration Number: 724897

Mark (words only): TOTAL

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2011-06-27

Filing Date: 1961-03-09

Transformed into a National Application: No

Registration Date: 1961-12-05

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: (NOT AVAILABLE)

Date In Location: 2011-06-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. General Mills IP Holdings II, LLC

Address:

General Mills IP Holdings II, LLC

1 General Mills Blvd.

Minneapolis, MN 55426

United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

U.S. Class: 046 (International Class 030)
Class Status: Active
Wheat Flakes
Basis: 1(a)
First Use Date: 1961-02-23
First Use in Commerce Date: 1961-02-23

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-06-27 - Third renewal 10 year
2011-06-27 - Section 8 (10-year) accepted/ Section 9 granted
2011-06-23 - TEAS Section 8 & 9 Received
2007-08-17 - Case File In TICRS
2002-05-28 - Second renewal 10 year
2002-05-28 - Section 8 (10-year) accepted/ Section 9 granted
2001-07-06 - Combined Section 8 (10-year)/Section 9 filed
2000-08-08 - Counter claim opp. for Proceeding No.
2000-04-19 - Counter claim opp. for Proceeding No.
1984-10-25 - Section 8 (6-year) accepted & Section 15 acknowledged
1981-12-05 - First renewal

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

ALEXANDRA SEPULVEDA
GENERAL MILLS IP HOLDINGS II, LLC
1 GENERAL MILLS BLVD.
MILLEAPOLIS, MN 55426
Phone Number: 763-764-5751
Fax Number: 763-764-2268

Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 72115229 **Filing Dt:** 03/09/1961 **Reg #:** 724897 **Reg. Dt:** 12/05/1961

Registrant: General Mills, Inc.

Mark: TOTAL

Assignment: 1

Reel/Frame: 2535/0417 **Received:** 07/08/2002 **Recorded:** 06/20/2002 **Pages:** 19

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor:

GENERAL MILLS, INC.

Exec Dt: 05/01/2002

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: GENERAL MILLS IP HOLDINGS II, LLC

NO. ONE GENERAL MILLS BLVD.
MINNEAPOLIS, MINNESOTA 55426

Entity Type: DELAWARE LIMITED LIABILITY COMPANY

Citizenship: NONE

Correspondent: DORI HUMMEL

LAW DEPARTMENT, 4NE
NO. ONE GENERAL MILLS BLVD.
MINNEAPOLIS, MN 55426

Search Results as of: 07/14/2011 11:13 AM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.1
Web interface last modified: Apr 30, 2009 v.2.1

EXHIBIT C

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-01-20 18:41:24 ET

Serial Number: 73563412 Assignment Information Trademark Document Retrieval

Registration Number: 1394264

Mark (words only): TOTAL

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2006-06-14

Filing Date: 1985-10-15

Transformed into a National Application: No

Registration Date: 1986-05-20

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2006-06-14

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. GENERAL MILLS IP HOLDINGS II, LLC

Address:

GENERAL MILLS IP HOLDINGS II, LLC
Number One General Mills Blvd.
MINNEAPOLIS, MN 55426
United States

Legal Entity Type: Limited Liability Company
State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 030

Class Status: Active

READY TO EAT BREAKFAST CEREAL

Basis: 1(a)

First Use Date: 1961-02-23

First Use in Commerce Date: 1961-02-23

ADDITIONAL INFORMATION

Prior Registration Number(s):

724897

1119067

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-06-14 - First renewal 10 year

2006-06-14 - Section 8 (10-year) accepted/ Section 9 granted

2006-06-14 - Assigned To Paralegal

2005-12-01 - TEAS Section 8 & 9 Received

2000-08-08 - Counter claim opp. for Proceeding No.

2000-04-19 - Counter claim opp. for Proceeding No.

1992-04-22 - Section 8 (6-year) accepted & Section 15 acknowledged

1992-01-28 - Section 8 (6-year) and Section 15 Filed

1986-05-20 - Registered - Principal Register

1986-02-25 - Published for opposition

1986-01-26 - Notice of publication

1985-12-20 - Approved for Pub - Principal Register (Initial exam)

1985-12-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Gregory P. Kaihoi

Correspondent

Gregory P. Kaihoi

GENERAL MILLS IP HOLDINGS II, LLC.

Number One General Mills Blvd.

MINNEAPOLIS, MN 55426

Trademark Assignment Abstract of Title

Total Assignments: 1**Serial #:** 73563412**Filing Dt:** 10/15/1985**Reg #:** 1394264**Reg. Dt:** 05/20/1986**Registrant:** GENERAL MILLS, INC.**Mark:** TOTAL**Assignment: 1****Reel/Frame:** 2535/0417**Received:** 07/08/2002**Recorded:** 06/20/2002**Pages:** 19**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:**GENERAL MILLS, INC.**Exec Dt:** 05/01/2002**Entity Type:** CORPORATION**Citizenship:** DELAWARE**Assignee:** GENERAL MILLS IP HOLDINGS II, LLCNO. ONE GENERAL MILLS BLVD.
MINNEAPOLIS, MINNESOTA 55426**Entity Type:** DELAWARE LIMITED LIABILITY COMPANY**Citizenship:** NONE**Correspondent:**DORI HUMMEL
LAW DEPARTMENT, 4NE
NO. ONE GENERAL MILLS BLVD.
MINNEAPOLIS, MN 55426