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

Proceeding	91203545
Party	Defendant Healthy by Nature Ltd
Correspondence Address	HEALTHY BY NATURE LTD 35 BECKSIDE, SCOPWICK LINCOLN, LN4 3NX UNITED KINGDOM
Submission	Other Motions/Papers
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Date	04/03/2012
Attachments	Letter regarding Notice of Opposition response late filing PDF.pdf ( 1 page ) (205102 bytes ) RESPONSE TO NOTICE OF OPPOSITION NO. 91203545 PDF.pdf ( 4 pages ) (286165 bytes ) USA TRADEMARK APPENDIXES PDF.pdf ( 5 pages )(239029 bytes )



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United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**3<sup>rd</sup> April 2012**

**Ref: Opposition No. 91203545, Serial No. 79095832**

Dear Sir/Madame,

I would like to take this opportunity to first and foremost apologise for missing deadline for the time to respond to the Notice Of Opposition submitted by General Mills and explain why we unfortunately missed the 'Time To Answer' date.

Since submitting our initial paperwork for registration of the trademark in discussion we have received tens of pieces of correspondence supposedly from the 'United States Patent and Trademark Office', all of which have been fraudulent documents from third parties. I have recently been informed you are aware that this is a problem and I fully appreciate that it is outside of your control. That said, I informed our part time secretary, who is extremely busy, to put anything that looked like it wasn't an official document from the United States Patent and Trademark Office to one side. Unfortunately the genuine letter from you containing the 'Notice of Opposition' in discussion was put into this pile and not given the attention it deserved and was only brought to my attention when we realised we hadn't had any genuine correspondence regarding the trademark for some time.

I am sure that you can appreciate the situation, having understood the level of fraudulent letters in circulation, and hope that on this occasion you can accept the late submission of our response to the Notice of Opposition.

I thank you very much for your time and understanding.

Kind Regards

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## **RESPONSE TO NOTICE OF OPPOSITION NO. 91203545**

### **General overview:**

We would like to dispute General Mill's opposition to the registration of the trademark 'Total Sweet' on four primary grounds, as outlined below, against the 16 grounds of opposition stated.

These four grounds can be summarised as:

1/ "Total" is a generic word used in a descriptive sense in many other trademarks and "Total Sweet" is no exception to this rule and shouldn't be treated as such.

2/ We don't believe there will be any damage done to General Mill's 'Total' trademark from the 'Total Sweet' brand as the product is not easily confused with any of General Mill's products in appearance or name.

3/ "Total" is already readily accepted as a common word used in many trademarks.

4/ There is a very real difference between the two products being discussed; a breakfast cereal and a table top sweetener.

*Please note:* where 'Appendixes' are referenced it is in referral to the attached/enclosed document entitled "USA trademarks appendixes'.

### **Individual responses:**

1/ This is not a point of opposition as it makes no mention of the trade mark and doesn't give any reason why we should not be able to register it.

2/ We strongly believe that, whilst the word "Total" on its own represents General Mill's brand, when "Total" is combined with another word such as in "Total Sweet" it takes on a totally different meaning and becomes a descriptive word, rather than a brand name. To example this point: A company could register 'Blue' as a trademark, but could not then uphold a meaningful opposition to someone using the word 'blue' as a descriptive word in another trademark such as 'Blue Candy' where the colour of the candy in question is blue.

Likewise we have used the word "Total" in the trademark "Total Sweet" as a descriptive word, in the same manner as one would use "complete", as we believe "Total Sweet" is a complete sweetener being natural, having lower calories than sugar, less net carbs, can be used to cook with, has a GI value of 7 etc.

'Total' is listed as an adjective in the dictionary to describe "constituting or comprising the whole; entire; whole: *the total expenditure*" and we have used it to this effect in the trademark "Total Sweet".

We believe this use of the word 'Total' is generally accepted in trademarks and to highlight this point please refer to appendixes A, B and C, which list numerous products within Classes 3,5 and 28 (other classes have similar recurrences) and clearly illustrates the generic use of the word 'Total' in trademarks. Appendix D also illustrates a few uses of the word 'Total' within Class 30 in the name of food brands.

Of particular interest is that, within Class 5, General Mills also have the trademark 'Total' (registration number 1119067) for use with 'Multi Vitamin and Iron Supplements'. As can be seen from Appendix B there are many trademarks that cover very similar products to this, which use the word 'total' within their name. We strongly believe that there should not be a discrepancy across classes and 'Total' should be able to be used in Class 30 in the same manner as the other classes as a descriptive term, as the appendixes clearly show it is.

**3/** These registrations, as pointed out by General Mills, are for breakfast cereals, which in we feel in no way overlaps with or would be confused with a 'table top sweetener', whose primary use in in hot beverages and cooking.

**4/** We do not wish to contest General Mills use of the "Total" trademark and feel that "Total Sweet" a) won't be confused with "Total" cereals, b) forms a new and distinct trademark c) won't take sales away from or confuse customers of General Mills

**5/** As pointed out in by General Mills, their trade mark has been used in connection with "READY – TO-EAT" cereals, which do not compete in any way with "table-top-sweeteners". Other food products in Class 30 also use the word "Total" in their registered trademark, as per Appendix D.

**6/** The appendixes, especially Appendix A, include trademarks held by companies who have also spent millions on promoting their products, which include the word 'Total', for example Proctor and Gamble and Colgate. Yet other much smaller brands are able to use the word 'Total' freely within their own marks.

Furthermore we feel the fact General Mills have spent so much money on their brand will make it even more recognizable to their customers as a cereal brand and therefore they will be even less likely to be confused with a table top sweetener of a different name, function, look, feel and description to cereals.

**7/** As with point 6, this if anything strengthens the argument that it is highly highly unlikely that any consumers will confuse "Total Sweet" table top sweetener with such a major cereal brand.

**8/** These are all still breakfast cereals and consumers are extremely unlikely to get confused between a table top sweetener used primarily to sweeten hot drinks and cook with and a breakfast cereal.

**9/** Once again, because of the fame of the Total brand associated with breakfast cereals, it is highly unlikely that customers will get confuse this with a functional table top sweetener.

**10/** This is not a ground for opposition, General Mills have simply stated a fact

**11/** As can be seen from the attached Appendixes it is generally considered that 'Total' can be incorporated into brand names as a descriptive term and therefore General Mills shouldn't have the right to determine who can and can't use the word.

**12/** As can be seen from the Appendixes it is clear consumers do not see 'Total' incorporated with another word(s) as a brand identity, but simply a descriptive word. In this respect, and given the marketing and publicity around the General Mills brand, we believe consumers will not get a cereal brand confused with a table top sweetener of a different name, function, look etc.

**13/** Whilst Healthy by Nature Ltd have not used "Total Sweet" in the US many other brands have used the word 'Total' in their brand names in nutritional and food areas, see Appendixes B and D, freely and without opposition from General Mills.

**14/** As per point 13 above - Whilst Healthy by Nature Ltd have not used "Total Sweet" in the US many other brands have used the word 'Total' in their brand names in nutritional and food areas, see Appendixes B and D, freely and without opposition from General Mills.

**15/**

**a)** All packaging will clearly and visibly have our company details on it thus making it obvious to any consumer that the origin of the product is not from General Mills. It is clear from the Appendixes that consumers do not see "Total", when used in conjunction with another word as a brand name, and will not confuse "Total Sweet" with "Total", especially when presented in a completely different manner, function, look etc and clearly stating a difference source of origin.

**b)** As per point 15(a) above - All packaging will clearly and visibly have our company details on it thus making it obvious to any consumer that the origin of the product is not from General Mills. It is clear

from the Appendixes that consumers do not see “Total”, when used in conjunction with another word as a brand name, and will not confuse “Total Sweet” with “Total”, especially when presented in a completely different manner, function, look etc and clearly stating a difference source of origin.

c) It is highly unlikely that ‘Total Sweet’ will be in anyway detrimental or dilute the ‘Total’ brand given all the arguments above, that illustrate that consumers do not see ‘Total’ as a brand name when combined with another word, simply as a descriptive precursor.

**16/** In respect to 1052(d) we firmly believe that the “Total Sweet” mark will cause no confusion to consumers because:

a) ‘Total’ is seen as a descriptive word as illustrated above

b) the products will not cause confusion, mistake or deception because they are very different products used for different purposes and functions; one being a breakfast cereal(s) and the other a natural table top sweetener used primarily for its health benefits in hot beverages and cooking.

In respect to 1125(c ) we firmly believe that it has been illustrated that the word ‘Total’ used in conjunction with other words is not a distinct trademark. When ‘Total’ is used on its own General Mills have a distinct mark, but used in conjunction with other words we believe there is no distinctiveness and it becomes a generic descriptive word. It is also clear that numerous third parties already use the word ‘Total’ in trademarks, both within the food and nutrition industry and elsewhere. We are also in a very different trading area, with breakfast cereals not competing in any way with table top sugar alternatives. Healthy by Nature in no way intend to compete with General Mills, trade on their reputation or cause any dilution of the ‘Total’ mark.

USA TRADEMARK APPENDIXES

**APPENDIX A – class 3**

Name	Class	Reg No	Description
TOTAL BEAUTY	3	3023651	Cosmetic brushes, powder puffs, facial sponges
TOTAL COLLAGEN	3	3319529	Cosmetics and beauty products
TOTALCLEAR	3	3562468	Personal care products
REVITALISANT TOTAL	3	3077354	Non-medicated skin care preparations
TOTAL NONSCENTS	3	2919823	Antiperspirant
TOTAL WHITE	3	3948750	Beauty creams for body care
COLGATE TOTAL	3	3858228	Mouthwash.
RIGHT GUARD TOTAL DEFENSE	3	3811666	Deodorants and antiperspirants
TOTAL DEFENSE	3	3794195	Deodorants and antiperspirants.
VISINE TOTAL EYE	3	3740930	Pre-moistened cosmetic cleansing pads.
TOTAL CARE	3	3573380	Topical nail strengtheners;
TOTAL IMPACT	3	3677502	Mascara.
TOTAL MATE	3	3512439	Cosmetics, namely, hand lotion and hand soap.
ORGANIC SOLUTIONS FOR TOTAL WELL BEING	3	3738620	Liquid hand soap, shower gel, body balm, body butter, massage
TOTALFOAM	3	3596161	Foam soap shampoo and body wash.
TOTAL DEFINITION	3	3632188	Cosmetics; Make-up
ENERGIZER TOTAL	3	3483526	Perfumery products, namely, perfumes, eau de cologne, perfumed water
Total Beauty Workout	3	3603169	Personal care products, namely, body cream
Total Response Therapy	3	3454931	Personal care products, namely, shower gels, hand, body
TOTAL BALANCE	3	2962574	Non-medicated skin care preparations.
TOTAL BODY	3	3769640	Skin and hair care products in the nature of skin care and skin treatments, Sun tanning preparations; non-medicated skin care preparations, namely, [ gels, ] lotions, [ oils, ]
TOTAL IMMERSION	3	2776285	moisturizers
TOTAL HAIR RECOVERY	3	2452017	hair care preparations
COLGATE TOTAL	3	2408460	toothpaste
TOTAL ECLIPSE	3	2799583	Nail polishes and coatings

TOTAL EFFECTS	3	2373766	<b>PROCTOR AND GAMBLE:</b> Skin care products, namely cleansers, moisturizers, and lotions
TOTAL	3	2142102	Oral care products, namely, toothpaste.
TOTAL BLOCK	3	2172287	Sunscreen preparations
TOTAL COLGATE	3	2046285	Oral care products, namely toothpaste
COLGATE TOTAL	3	2157065	Mouthwash, toothpaste ] * oral care products, namely, toothpaste *.
TOTAL BEAUTY	3	2080574	Soap bars with cleansing and skin exfoliation pads embedded therein
TOTAL PERFORMANCE	3	1986728	Hand cleaning preparations, dish detergents, skin and toilet soaps and personal deodorants
TOTAL FOOT RECOVERY	3	1888160	Cosmetic and toiletry preparations, namely foot creams and lotions
TOTAL HOLD	3	1863009	Hairspray
TOTAL FINISH	3	1234221	Cosmetics-Namely, Foundation Cream
Total Fitness Yves Saint Laurent	3	2995384	Slimming creams for the body
Totalist 4	3	3137201	Facial moisturizers, cold creams, night cream
Total Vitamin V	3	3365919	Skin preparations, namely, antioxidant serums
Total Recharge / Energizer Total	3	3217132	Pefumery products
Total Complete Skincare Solutions	3	3893815	Body and beauty care cosmetics
Total Moisture	3	3984353	Non-medicated skin care preparations, namely, lotions for the sk
Total Trest	3	4050256	Haircare
Total Truth	3	4020717	Skin care

## APPENDIX B – class 5

Name	Class	Reg No	Description
TOTAL EFFECTS BEAUTIFUL SKIN & WELLNESS	5	3050224	Vitamins and nutritional supplements.
TOTAL NUTRITION GREENS	5	3194977	Nutritional and dietary supplement
SKIN & TOTAL BODY	5	2935651	Nutritional supplements and vitamins.
MAALOX TOTAL STOMACH RELIEF	5	2883080	Antacid
TOTAL HEALTH SOLUTIONS	5	3476580	Vitamins, minerals, dietary supplements
TOTAL HEELING	5	4026682	Topical preparations for medical treatment of fissures in the skin, cracked or dry skin
ANTI-AGING TOTAL BODY DAILY DEFENSE	5	77963845	Dietary supplements; food supplements; herbal supplements



DR. BO'S TOTAL TRIM	5	3844487	Dietary and nutritional supplements
TOTAL CALM & FOCUS	5	3754554	Nutraceuticals for use as a dietary supplement
7TOTAL	5	3718593	Contact lens solutions
TOTAL FERTILITY	5	3773384	Vitamin supplement for human consumption.
Total Food Multi	5	3865322	Dietary and nutritional supplements
TOTAL-BIOTICS	5	3433854	Nutritional supplements for pets
TOTAL JOINT SUPPORT	5	3498435	Dietary and nutritional supplements
TLC TOTAL LIPID CONTROL	5	3539675	Dietary supplements.
TOTALBERRY	5	3481921	Dietary and nutritional supplements.
TOTALSLEEP	5	3473528	Functional beverage, namely, a ready to drink nutritional supplement
TOTAL EFA	5	3533132	Nutritional and dietary supplements,for weight loss, <b>dietary food products</b>
TOTALIMMUNITY	5	3521956	Nutritional supplement
TOTAL SHAKE	5	3421858	Nutritional supplements.
MAALOX TOTAL RELIEF	5	3680361	Pharmaceutical preparations for relief of gastro-intestinal distress
TOTAL GOJI100	5	3274041	100% pure goji juice for medicinal purposes, namely, liquid dietary supplement
TOTAL EYEBRIGHT-M	5	2587455	Dietary and nutritional supplements with eyebright and minerals
TOTAL CMO	5	2587452	Dietary and nutritional supplements with CMO
TOTAL UPPER GI	5	2514715	Dietary and nutritional supplements.
TOTAL LEAKY GUT	5	2531655	Dietary and nutritional supplements.
NATURADE TOTAL SOY	5	2552154	Soy based meal replacement protein powder
TOTAL ENZYMES	5	2492419	Dietary and nutritional supplements containing enzymes
TOTAL PROBIOTICS			
TOTAL HEART			
TOTAL INFLAM			
TOTAL NUTRITION SYSTEM	5	3221045	Dietary and Nutritional Supplements.
TOTAL BODY	5	3413597	Oral spray for relief of joint pain, inflammation, swelling
TOTAL BODY PURIFIER	5	3259589	Vitamins and nutritional supplements.
TOTAL NUTRITION TECHNOLOGY	5	3118721	Dietary food supplements.
TOTAL FOCUS	5	2932410	Nutraceuticals for use as a dietary supplement.
TOTAL FIRST AID	5	2852644	Safety supplies, namely, aspirin and wound dressings.

TOTAL-B TABLET	5	2693053	Vitamin and dietary supplements
VITALZYM TOTAL SYSTEM SUPPORT	5	2934292	Nutritional and dietary supplements
TOTAL CONTROL	5	2832678	Nutritional and dietary supplements in tablet or capsule form
TOTAL ECLIPSE	5	2748088	Dietary supplements
TEBS TOTAL EYE AND BODY SUPPORT	5	2681641	Vitamin and mineral supplements for eye care.
TOTAL-GEST	5	2530638	Dietary Supplement
TOTALBOND	5	2443506	Dental Cement
TOTAL CARE	5	2374800	Vitamin and mineral supplements, herbal supplements and dietary supplements.
BALLY TOTAL FITNESS	5	2783443	Nutritional supplements and vitamins.
THE 14 DAY TOTAL BODY CLEANSE	5	2223361	Nutritional supplement consisting of freeze dried and organic herbal extracts
TOTALLINK SPRAY-CEUTICALS	5	2810823	Preparations containing vitamin, mineral and/or herbal supplements
THE TOTAL BEAUTIFICATION SYSTEM	5	1477359	Dietary supplement nutrient drink for weight monitoring program.
TOTAL	5	1119067	<b>GENERAL MILLS:</b> Multi-vitamin and iron supplements
Inversion - Total Beaute Femme	5	3365980	Pharmaceutical preparations for the treatment of skin disorders
Total Omega	5	3216576	Nutritional dietary supplements and essential fatty acid oil
Total Power	5	3218956	Nutritional and dietary supplements
Total Body	5	4007837	Nutritional Supplements
Total Rejuvenation	5	3988946	Dietary supplements for human consumption
TotalFLEX	5	3925378	Food supplements; Vitamin supplements
TotalVegan	5	3969572	Vegan Dietary Supplements
Vitality Total	5	4058846	Dietary and nutritional supplements
Totalaloe	5	4032789	Dietary and nutritional supplements made in whole or significant part of aloe vera
Daily Total Oae DR. PERRICONE'S SKIN AND TOTAL BODY NUTRITIONAL SUPPLEMENTS	5	4028904	Dietary and nutritional supplements
	5	3162750	Nutritional supplements and vitamin supplements

## APPENDIX C – class 28

Name	Class	Reg No	Description
Total Gym	28	3082481	Exercise machines and accessories therefor

Total Strider	28	3096068	Exercise treadmills
Total Gym Cyclo Trainer	28	3390675	Exercise machines; exercise equipment, namely, manual leg pedaling exercisers
Total Vibes	28	958618	Exercise machines for home use, namely, vibrating platform fitness machines
Total Core	28	3581776	Manually operated exercise equipment

**APPENDIX D – Classes 29,30**

<b>Name</b>	<b>Class</b>	<b>Reg No</b>	<b>Description</b>
TOTAL HOTTIE, INC.	30	3807625	Hot sauce; Sauces; Salsa
AUTHENTIC GREEK FETA TOTAL FAGE	29	2348306	Greek feta cheese made from pasteurized ewe and goat milk
Tale & Quale Total Natural	30	955862	Coffee, tea, cocoa, rice, tapioca, saga, artificial coffee; preparations made from cereals, namely, bakery products, cereal based snack foods and salted cereal based snack foods,