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

Proceeding	91194974
Party	Plaintiff Promark Brands Inc. and H.J. Heinz Company
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Signature	/Angela R. Gott/
Date	03/12/2013
Attachments	Opposers' First Notice of Reliance.pdf (3 pages)(100113 bytes) Exhibit A.pdf (13 pages)(411954 bytes) Exhibit.pdf (1 page)(22542 bytes) Exhibit B.pdf (21 pages)(513833 bytes)

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

PROMARK BRANDS INC. and
H. J. HEINZ COMPANY,

Opposers,

vs.

GFA BRANDS, INC.,

Applicant.

**Opposition No. 91194974 (Parent)
and Opposition No. 91196358**

U.S. Trademark Application 77/864,305
For the Mark **SMART BALANCE**

U.S. Trademark Application 77/864,268
For the Mark **SMART BALANCE**

OPPOSERS' FIRST NOTICE OF RELIANCE

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice and Section 704.10 of the Trademark Trial and Appeal Board Manual of Procedure, Opposers, ProMark Brands Inc. and H. J. Heinz Company, hereby submit, make of record in connection with this opposition proceeding, and notify Applicant of Opposers' reliance upon GFA Brands, Inc.'s Response to ProMark Brands Inc.'s First Set of Interrogatories Nos. 5, 6, 7, 21, 29, 30, and 31 and GFA Brands, Inc.'s Response to ProMark Brands Inc.'s Requests for Admission Nos. 1-136. These responses are relevant to the issues of likelihood of confusion and dilution, and show, among other things, the manner in which Applicant distributes, markets, and sells products bearing the SMART BALANCE mark, the channels of trade through which Applicant intends to offer, sell, market, and distribute the goods described in the pending applications, and Applicant's enforcement

efforts against third parties that have used and/or filed trademark application for marks containing the word "SMART."

The a true and correct copy of the submitted interrogatory responses is attached hereto as Exhibit A, and a true and correct copy of the submitted admissions is attached hereto as Exhibit B.

Dated this 12th day of March, 2013.

By: /Angela R. Gott/
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*Attorneys for Opposers
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by FedEx Express mail, postage prepaid, on this 12th day of March, 2013, to Counsel for Applicant:

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Attorney for Opposers

EXHIBIT A

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

PROMARK BRANDS INC.,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

**Opposition Nos. 91194974
91196358**

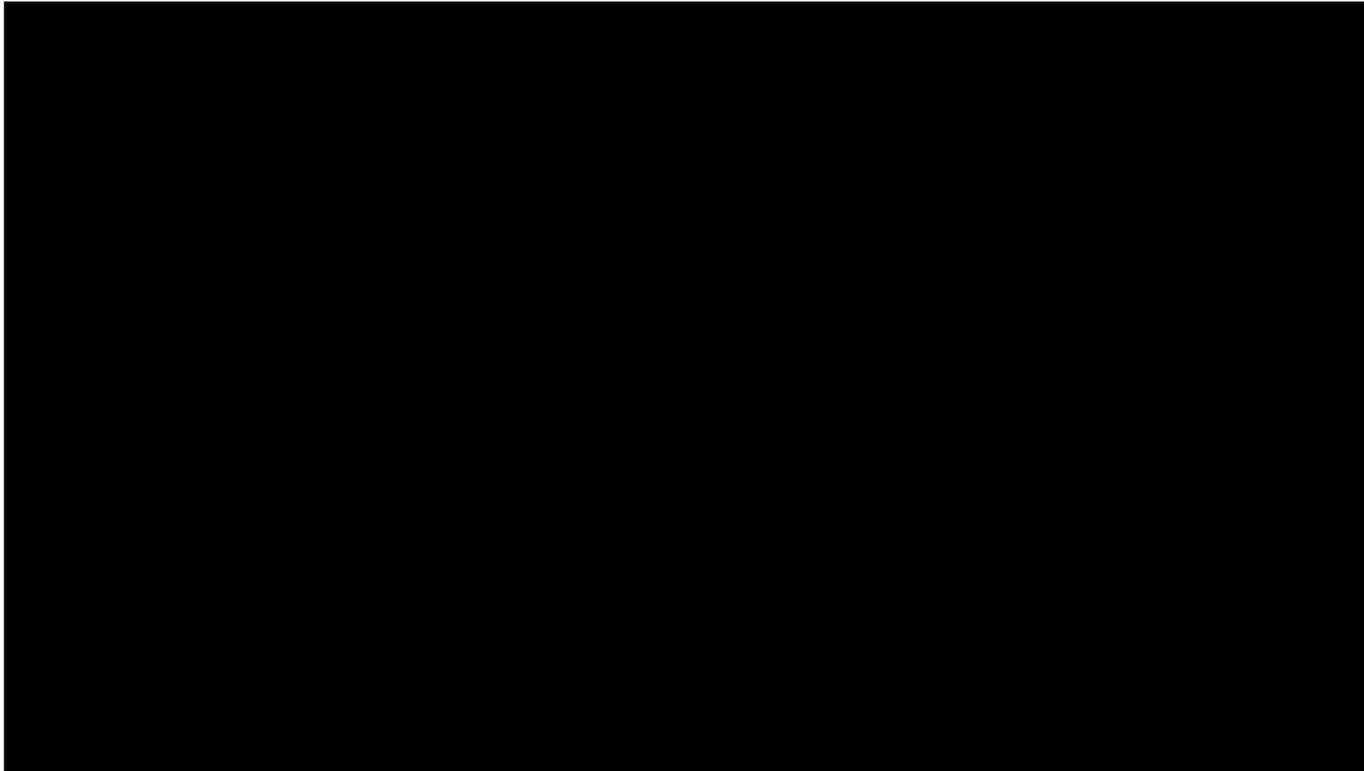
U.S. Trademark Application 77/864,305
For the Mark **SMART BALANCE**
Published in the Official Gazette on April 20, 2010

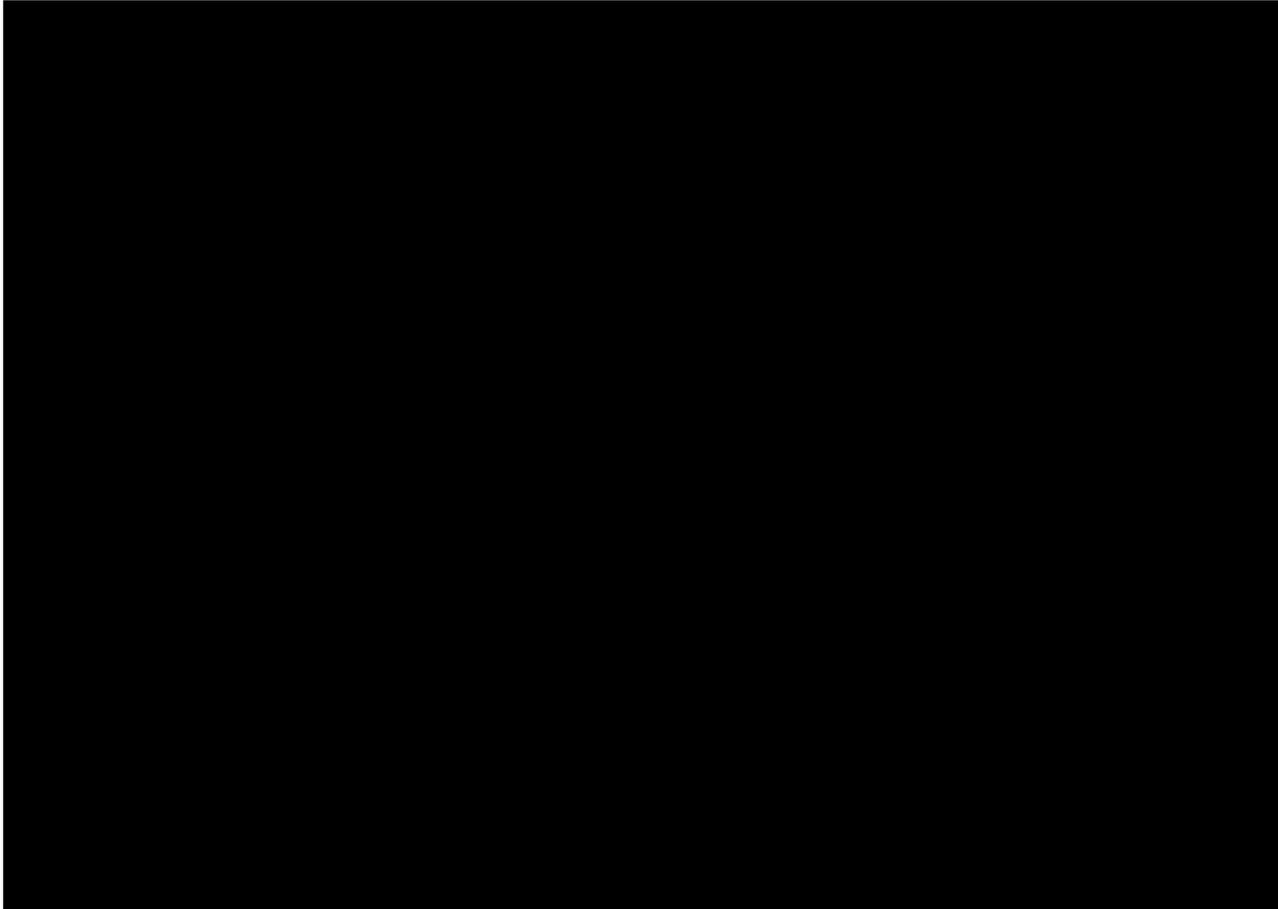
U.S. Trademark Application 77/864,268
For the Mark **SMART BALANCE**
Published in the Official Gazette on August 10, 2010

**GFA BRANDS, INC.'S RESPONSE TO PROMARK BRANDS INC.'S
FIRST SET OF INTERROGATORIES**

Applicant GFA Brands, Inc. ("GFA") responds as follows to Opposer's First Set of

Interrogatories:





INTERROGATORY NO. 5: Describe how Applicant distributes products branded with Applicant's Marks.

RESPONSE: GFA objects to this interrogatory as vague and ambiguous regarding whether the Interrogatory seeks information about products sold in connection with the SMART BALANCE mark generally, or information about the products identified in the applications at issue." Subject to and without waiving these objections, GFA has not distributed products sold in connection with the SMART BALANCE mark that fall within the identified product classes; rather, as identified in the applications, GFA has an intent to use the SMART BALANCE mark on such products. GFA generally distributes products in connection with the SMART BALANCE mark by selling its products directly to retailers, such as Wal-Mart. GFA also

distributes products by selling products to third parties who then sell those products to institutional users.

INTERROGATORY NO. 6: Describe the manner in which products branded with Applicant's Marks are marketed and sold.

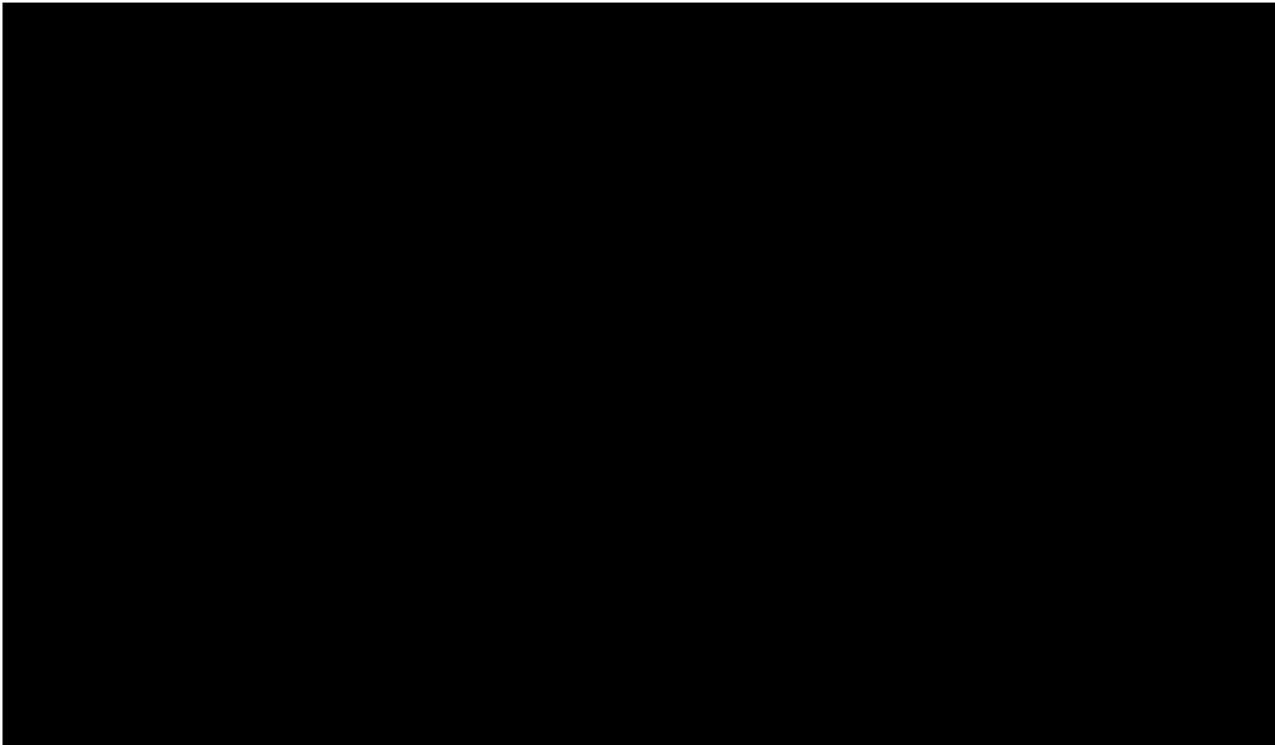
RESPONSE: GFA objects to this interrogatory as vague and ambiguous regarding whether the Interrogatory seeks information about products marketed or sold in connection with the SMART BALANCE mark generally, or information about the products identified in the applications at issue. Subject to and without waiving these objections, GFA has not marketed or sold products in connection with the SMART BALANCE mark that fall within the identified product classes; rather, as identified in the application, GFA has an intent to use the SMART BALANCE mark on such products. GFA generally markets products in connection with the SMART BALANCE mark using television advertisements, radio advertisements, print advertisements, advertisements containing coupons, and by maintaining an internet presence including its webpage <http://www.smartbalance.com/>. GFA generally distributes products in connection with the SMART BALANCE mark by selling its products directly to retailers, such as Wal-Mart. GFA also distributes products by selling products to third parties who then sell those products to institutional users.

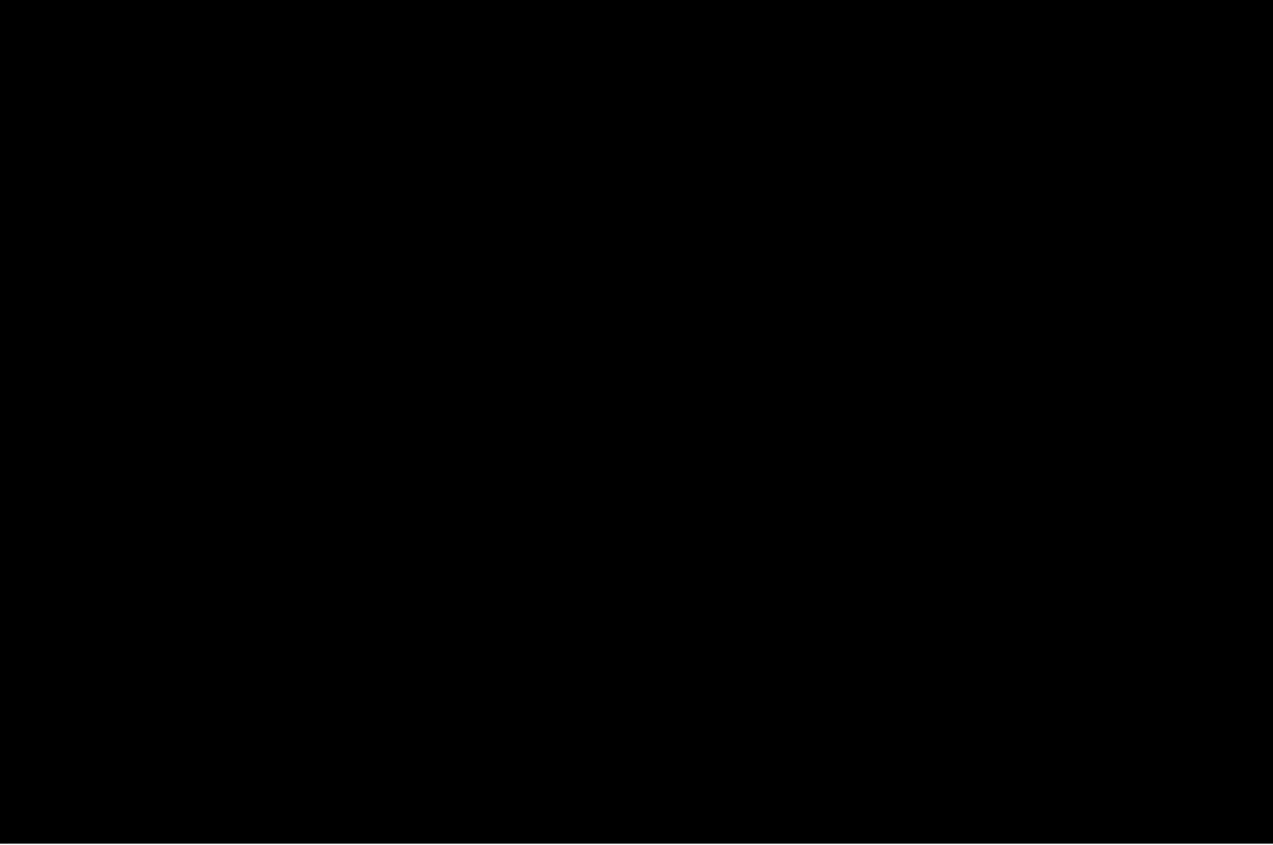
INTERROGATORY NO. 7: Identify any and all types of retail stores or outlets in which products branded with Applicant's Marks are marketed, sold and/or distributed.

RESPONSE: GFA objects to this interrogatory as vague and ambiguous regarding whether the Interrogatory seeks information about products marketed and sold in connection with the SMART BALANCE mark generally, or information about the products identified in the applications at issue. Subject to and without waiving these objections, GFA has not marketed or sold products in connection with the SMART BALANCE mark that fall within the identified product classes; rather, as identified in the application, GFA has an intent to use the SMART

BALANCE mark on such products. As a result, there are no stores selling products as identified in the applications at issue in connection with the SMART BALANCE mark.

Additionally, this Interrogatory is vague and ambiguous with regard to the use of the term "type." GFA interprets this term to call for the identification of the trade name of the retail chain and its further response is based on this interpretation. To the extent that this Interrogatory seeks information regarding any and all types of retail stores or outlets in which GFA has marketed, sold or distributed products in connection with the SMART BALANCE mark, GFA objects that such an Interrogatory is overly broad, unduly burdensome, calls for confidential business information before the parties have agreed to a protective order, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, product bearing the SMART BALANCE mark is sold at retail stores located in all fifty states, including without limitation Safeway, Kroger, and Publix. After the parties have agreed to the terms of a protective order, GFA will supply a list of its top 25 retail customers as determined by total sales revenue.

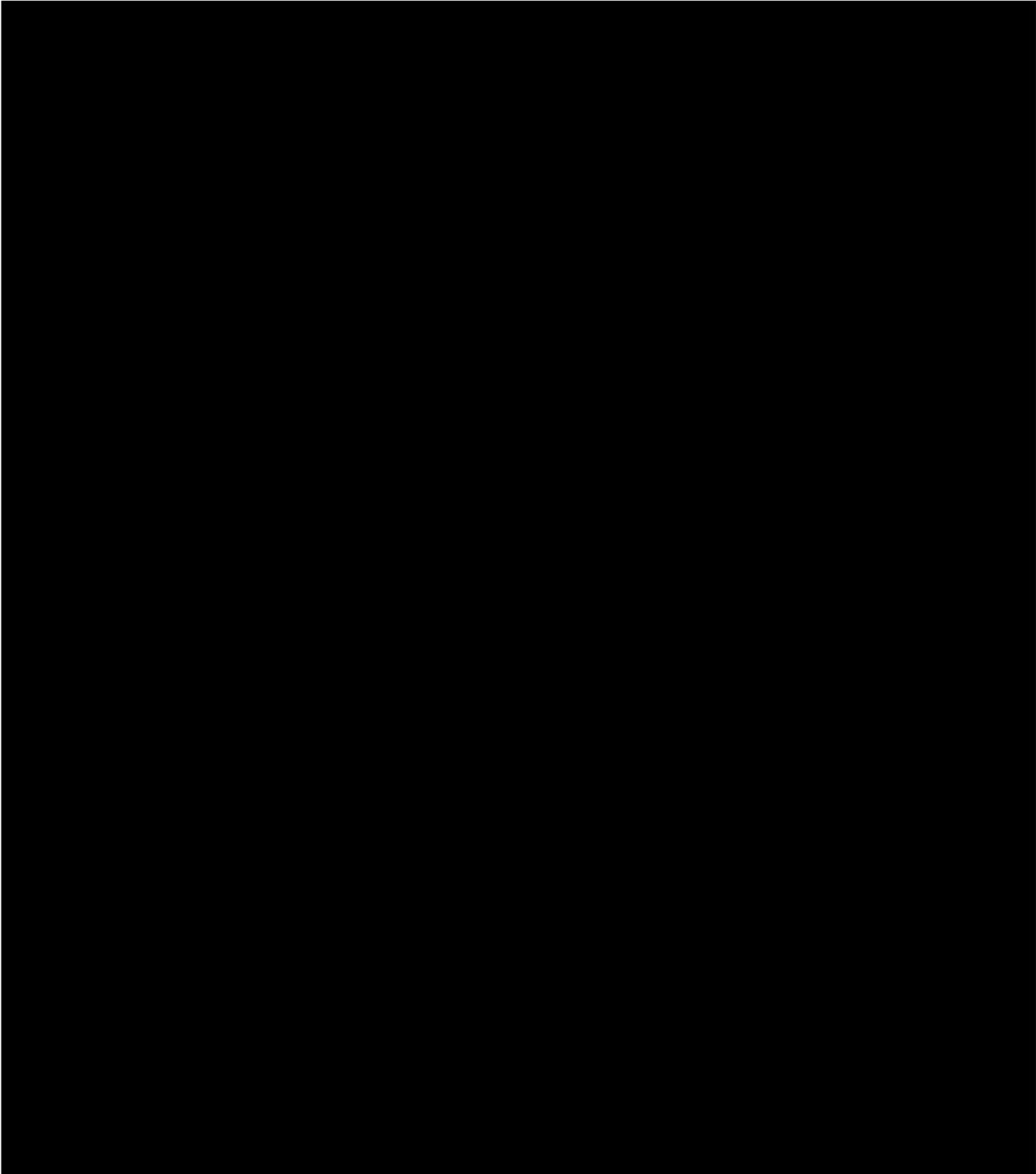


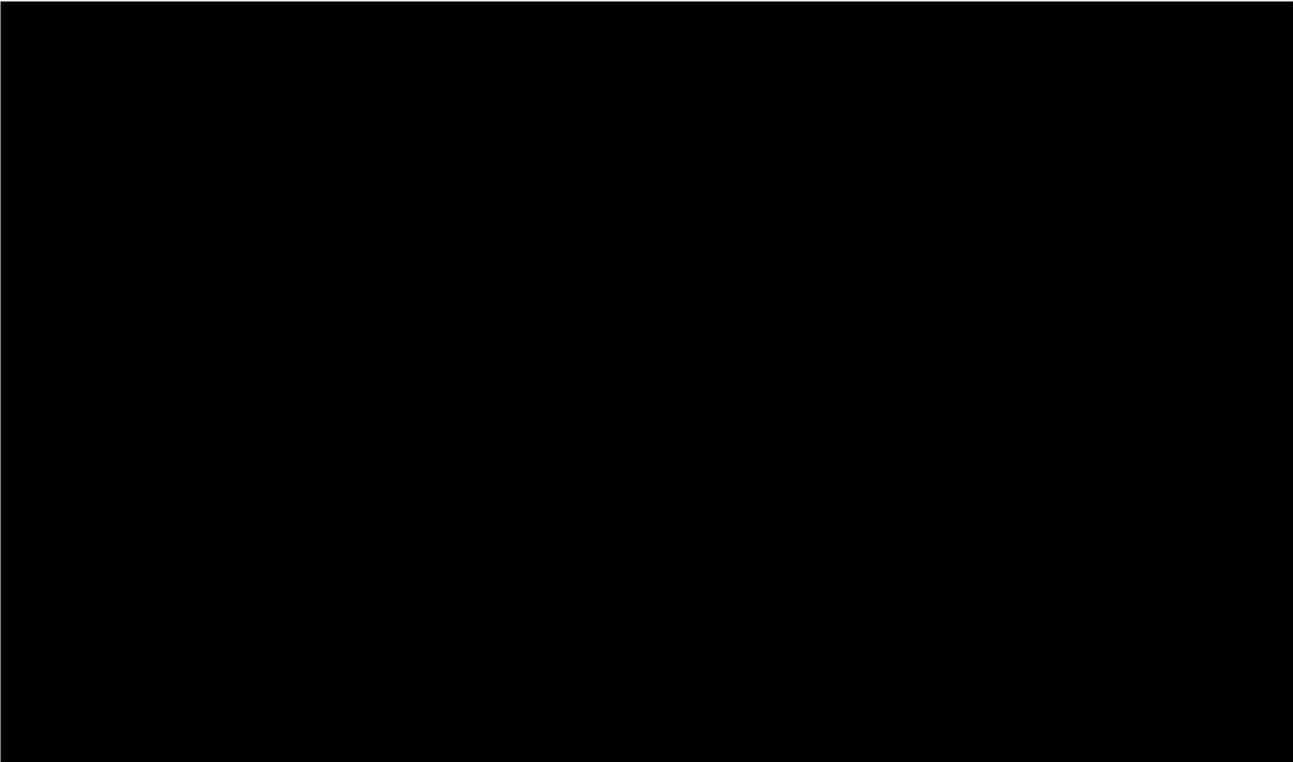


INTERROGATORY NO. 21: Describe the channel(s) of trade by and through which (a) Applicant presently offers, sells, markets or distributes any goods or services in connection with Applicant's Marks; (b) intends to offer, sell, market or distribute any goods or services in connection with Applicant's Marks; and (c) has previously offered, sold, marketed or distributed, any goods or services in connection with Applicant's Marks.

RESPONSE: GFA objects to this Interrogatory as vague and ambiguous regarding whether the Interrogatory seeks information about agreements related to products sold in connection with the SMART BALANCE mark generally, or information about the agreements related to products identified in the applications at issue, which would be consistent with Opposer's definition of "Applicant's Marks." Subject to and without waiving these objections, GFA responds that it is not presently, nor has it previously offered, sold, marketed or distributed any goods or services in connection with the goods described in the pending applications. GFA intends to offer, sell, market and distribute goods in a manner consistent with how it sells,

markets and distributes goods currently bearing the SMART BALANCE mark, including sales to retailers such as Wal-Mart and sales to third parties.





INTERROGATORY NO. 29: For each instance in which Applicant has ever asserted rights against a third party for a United States trademark registration, pending application for trademark registration, or use of a mark which contained or contains the word “SMART,” or any derivation of that word, by itself or in combination with any other word or phrase, state for each assertion:

- a. The date and manner in which such assertion was made;
- b. Identify the person or entity to whom such assertion was made;
- c. State the outcome of each assertion; and
- d. Identify all documents that reflect or refer to each assertion.

RESPONSE: GFA objects to this Interrogatory because providing responses to each such subpart creates a compound interrogatory that is multiple in form and combined with the other Interrogatories that are multiple in form would exceed the limit on interrogatories designated by 37 CFR § 2.120. GFA further objects to the identification of “all documents” referring to each assertion. Such an Interrogatory requiring the identification of all such documents is overly broad, unduly burdensome, not reasonably calculated to lead to the

discovery of admissible evidence, and calls for information that is subject to the attorney-client privilege and/or work product doctrine. Subject to and without waiving these objections, GFA states that it has filed trademark oppositions opposing the registration of the marks SMART BALANCE GOLF, SMART GOODNESS, and SMART@HEART. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, GFA will produce documents sufficient to identify and describe these assertions and their outcomes, see for example documents bearing production numbers GFA000089 through GFA000119.

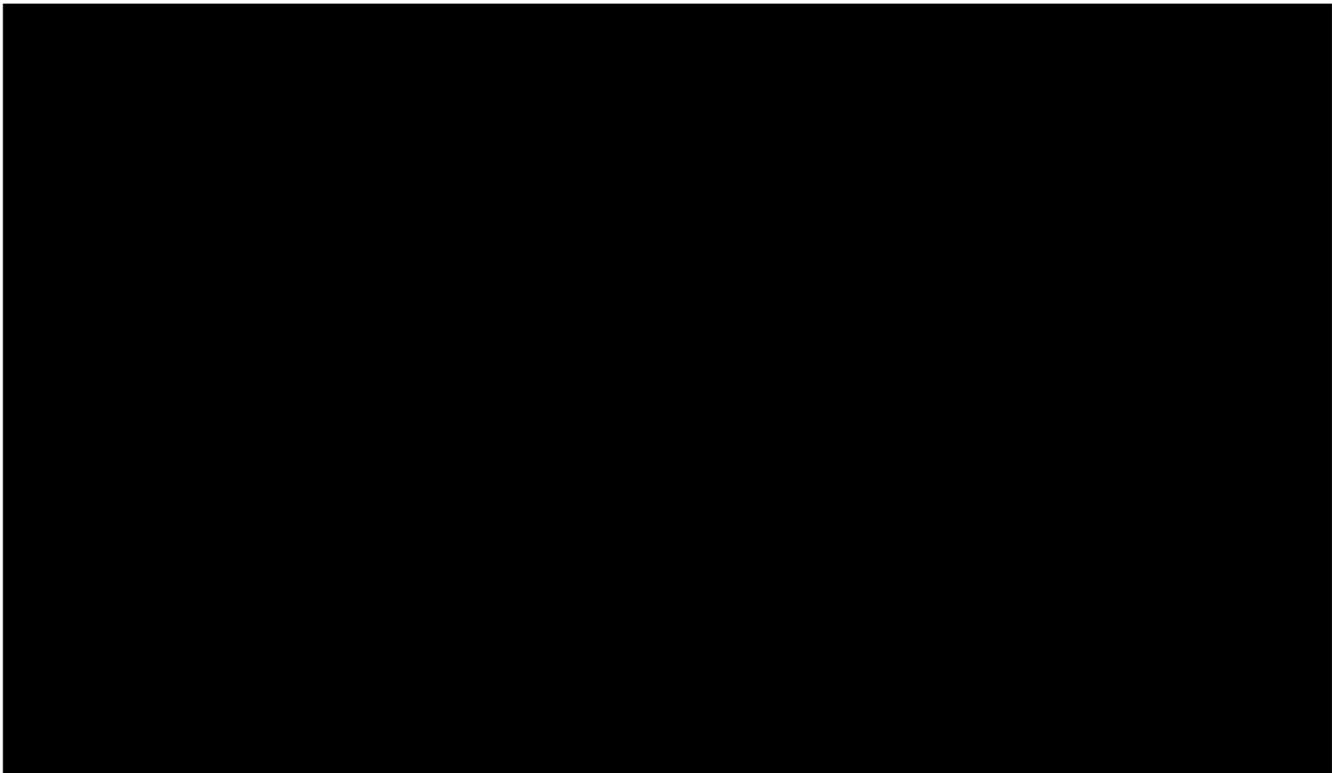
INTERROGATORY NO. 30: For each assertion identified in response to Interrogatory No. 32, describe Applicant's legal basis for the assertion.

RESPONSE: GFA objects to this Interrogatory as vague and ambiguous. Interrogatory No. 32, does not call for the identification of any assertions. GFA assumes ProMark intended to reference Interrogatory No. 29 and responds accordingly. GFA objects to the Interrogatory as read to reference Interrogatory No. 29 as being vague, ambiguous, overly broad, unduly burdensome, calling for information that is subject to the attorney-client privilege and/or work product doctrine, and calling for information that is not likely to lead to the discovery of admissible evidence. GFA further objects that providing responses to each such assertion creates a compound interrogatory that is multiple in form and, combined with the other Interrogatories that are multiple in form, would exceed the limit on interrogatories designated by 37 CFR § 2.120. Subject to and without waiving these objections, GFA interprets this Interrogatory as calling for the general description of the legal basis for these disputes and responds that GFA asserted rights in marks containing the word "SMART" because under the circumstances of the use and its business objectives at that time, GFA believed its business interests would be harmed by potential confusion between its SMART BALANCE mark and the mark it opposed.

INTERROGATORY NO. 31: Has Applicant has ever known of a United States trademark registration, pending application for trademark registration, or third party use which

contained or contains the word "SMART", or any derivation of that word, by itself or in combination with any other word or phrase and not acted upon any assertion of rights? If the answer is yes, describe each instance and the reason for not asserting any right.

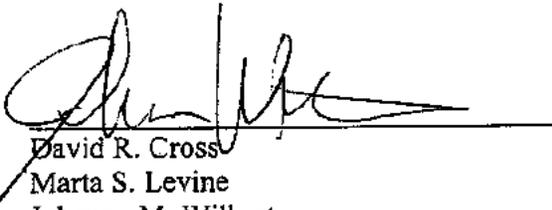
RESPONSE: GFA objects to this Interrogatory as vague, overly broad, unduly burdensome, calling for information subject to the attorney-client privilege and/or work product doctrine, and calling for confidential business information before the parties have agreed to a protective order. Specifically, this Interrogatory is vague and overly broad because it does not contain a temporal limitation. Providing further analysis regarding every such trademark application regardless of any relationship to the product category and/or specific issues in this opposition, is unduly burdensome. Subject to and without waiving these objections, GFA states that it evaluates trademark registrations as well as third party use of the word SMART and makes decisions based on and consistent with the rights and business objectives of the company at that time.





Dated this 23rd day of May, 2011.

As to objections,



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Attorneys for Applicant GFA Brands, Inc.

VERIFICATION

I, Norman Matar declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the following is true and correct:

I am Executive Vice President, General Counsel, and Secretary for GFA Brands, Inc. ("GFA"). I have read the forgoing response to interrogatories and know the contents. The responses were prepared with the assistance of other knowledgeable individuals and the answers are based on, and therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered in the course of preparation of these answers. GFA reserves the right to change the answers if it appears that omissions or errors have been made or that more accurate information is available. Subject to the limitations set forth above, the answers are true to the best of my knowledge, information and belief, which depends in part on information provided by others.

Norm Matar
Norman Matar

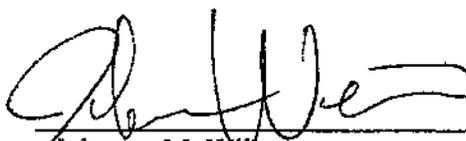
5/23/11
Date

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2011, I served upon counsel of record the foregoing by causing the same to be delivered by UPS overnight delivery and e-mail to:

Ashley H. Zito
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-8330

Dated this 23rd day of May, 2011.



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EXHIBIT B

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

PROMARK BRANDS INC.,

Opposer,

vs.

GFA BRANDS, INC.,

Applicant.

Opposition Nos. 91194974 and 91196358

U.S. Trademark Application 77/864,305
For the Mark **SMART BALANCE**
Published in the Official Gazette
on April 20, 2010

U.S. Trademark Application 77/864,268
For the Mark **SMART BALANCE**
Published in the Official Gazette
on August 10, 2010

**GFA BRANDS, INC.'s RESPONSE TO PROMARK BRANDS INC.'S REQUESTS FOR
ADMISSION**

Applicant, GFA Brands, Inc. ("GFA" or "Applicant"), by its attorneys, Quarles & Brady, responds as follows to Opposer's Requests for Admission.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART GOODNESS.

RESPONSE: Admits and states that the applicant later abandoned its application without proceeding to a trial or decision on the merits.

REQUEST FOR ADMISSION NO. 2: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART GOODNESS based, at least in part, on GFA Brands, Inc.'s belief that SMART GOODNESS is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 3: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART GOODNESS based, at least in part, on the assertion that the SMART GOODNESS mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 4: Admit that GFA Brands, Inc. stated that registration of

SMART GOODNESS would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 5: Admit that GFA Brands, Inc. asserted that registration of the mark SMART GOODNESS would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 6: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART GOODNESS, at least in part, because SMART GOODNESS contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 7: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTCAKES!.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 8: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMARTCAKES! based, at least in part, on GFA Brands, Inc.'s belief that SMARTCAKES! is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 9: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTCAKES! based, at least in part, on the assertion that the SMARTCAKES! mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 10: Admit that GFA Brands, Inc. stated that registration of SMARTCAKES! would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

RESPONSE [sic]: Admit that GFA Brands, Inc. asserted that registration of the mark SMARTCAKES! would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 11: Admit that GFA Brands, Inc. opposed federal registration of the mark SMARTCAKES!, at least in part, because SMARTCAKES! contains the

word "smart".

RESPONSE: Admits.

RESPONSE [sic]: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART@HEART.

RESPONSE: Admits and states that the applicant filed no answer so there was no trial nor was there a decision on the merits.

REQUEST FOR ADMISSION NO. 12: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART@HEART based, at least in part, on GFA Brands, Inc.'s belief that SMART@HEART is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 13: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART@HEART based, at least in part, on the assertion that the SMART@HEART mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 14: Admit that GFA Brands, Inc. stated that registration of SMART@HEART would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 15: Admit that GFA Brands, Inc. asserted that registration of the mark SMART@HEART would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 16: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART@HEART, at least in part, because SMART@HEART contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 17: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART SALT.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 18: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART SALT based, at least in part, on GFA Brands, Inc.'s belief that SMART SALT is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 19: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART SALT based, at least in part, on the assertion that the SMART SALT mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 20: Admit that GFA Brands, Inc. stated that registration of SMART SALT would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 21: Admit that GFA Brands, Inc. asserted that registration of the mark SMART SALT would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 22: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART SALT, at least in part, because SMART SALT contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 23: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHILI.

RESPONSE: Admits and states that GFA later voluntarily withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 24: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART CHILI based, at least in part, on GFA Brands, Inc.'s belief that SMART CHILI is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 25: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHILI based, at least in part, on the assertion that the SMART CHILI mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 26: Admit that GFA Brands, Inc. stated that registration of SMART CHILI would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 27: Admit that GFA Brands, Inc. asserted that registration of the mark SMART CHILI would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 28: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART CHILI, at least in part, because SMART CHILI contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 29: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART BBQ.

RESPONSE: Admits and states that the applicant later amended its application and the opposition was dismissed without proceeding to trial or a decision on the merits.

REQUEST FOR ADMISSION NO. 30: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART BBQ based, at least in part, on GFA Brands, Inc.'s belief that SMART BBQ is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 31: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART BBQ based, at least in part, on the assertion that the SMART BBQ mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 32: Admit that GFA Brands, Inc. stated that registration of SMART BBQ would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 33: Admit that GFA Brands, Inc. asserted that registration of the mark SMART BBQ would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 34: Admit that GFA Brands, Inc. opposed federal

registration of the mark SMART BBQ, at least in part, because SMART BBQ contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 35: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART VEGGIE.

RESPONSE: Admits and states that GFA later withdrew its opposition before a trial or decision on the merits.

REQUEST FOR ADMISSION NO. 36: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART VEGGIE based, at least in part, on GFA Brands, Inc.'s belief that SMART VEGGIE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 37: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART VEGGIE based, at least in part, on the assertion that the SMART VEGGIE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 38: Admit that GFA Brands, Inc. stated that registration of SMART VEGGIE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 39: Admit that GFA Brands, Inc. asserted that registration of the mark SMART VEGGIE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 40: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART VEGGIE, at least in part, because SMART VEGGIE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 41: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART LUNCH.

RESPONSE: Admits and states that the applicant later amended its application for the mark and that the opposition was dismissed before trial or any decision on the merits.

REQUEST FOR ADMISSION NO. 42: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART LUNCH based, at least in part, on GFA Brands, Inc.'s belief that SMART LUNCH is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 43: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART LUNCH based, at least in part, on the assertion that the SMART LUNCH mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 44: Admit that GFA Brands, Inc. stated that registration of SMART LUNCH would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 45: Admit that GFA Brands, Inc. asserted that registration of the mark SMART LUNCH would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 46: Admit that GFA Brands, Inc. opposed the registration of the mark SMART LUNCH, at least in part, because SMART LUNCH contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 47: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHEESE.

RESPONSE: Admits and states that applicant filed an abandonment of its application before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 48: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART CHEESE based, at least in part, on GFA Brands, Inc.'s belief that SMART CHEESE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 49: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHEESE based, at least in part, on the assertion that the SMART CHEESE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 50: Admit that GFA Brands, Inc. stated that registration of SMART CHEESE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 51: Admit that GFA Brands, Inc. asserted that registration of the mark SMART CHEESE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 52: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART CHEESE, at least in part, because SMART CHEESE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 53: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART PUDDING.

RESPONSE: Admits and states that the applicant later abandoned its application before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 54: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART PUDDING based, at least in part, on GFA Brands, Inc.'s belief that SMART PUDDING is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 55: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART PUDDING based, at least in part, on the assertion that the SMART PUDDING mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 56: Admit that GFA Brands, Inc. stated that registration of SMART PUDDING would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 57: Admit that GFA Brands, Inc. asserted that registration of the mark SMART PUDDING would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 58: Admit that GFA Brands, Inc. opposed federal

registration of the mark SMART PUDDING, at least in part, because SMART PUDDING contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 59: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART LINKS.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 60: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART LINKS based, at least in part, on GFA Brands, Inc.'s belief that SMART LINKS is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 61: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART LINKS based, at least in part, on the assertion that the SMART LINKS mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 62: Admit that GFA Brands, Inc. stated that registration of SMART LINKS would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 63: Admit that GFA Brands, Inc. asserted that registration of the mark SMART LINKS would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 64: Admit that GFA Brands, Inc. opposed the registration of the mark SMART LINKS, at least in part, because SMART LINKS contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 65: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART SAUSAGE.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 66: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART SAUSAGE based, at least in part, on GFA Brands, Inc.'s belief that SMART SAUSAGE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 67: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART SAUSAGE based, at least in part, on the assertion that the SMART SAUSAGE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 68: Admit that GFA Brands, Inc. stated that registration of SMART SAUSAGE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 69: Admit that GFA Brands, Inc. asserted that registration of the mark SMART SAUSAGE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 70: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART SAUSAGE, at least in part, because SMART SAUSAGE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 71: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART BAKE.

RESPONSE: Admits and states that the applicant filed no answer and judgment of default was entered before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 72: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART BAKE based, at least in part, on GFA Brands, Inc.'s belief that SMART BAKE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 73: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART BAKE based, at least in part, on the assertion that the SMART BAKE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 74: Admit that GFA Brands, Inc. stated that registration of SMART BAKE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 75: Admit that GFA Brands, Inc. asserted that registration of the mark SMART BAKE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 76: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART BAKE, at least in part, because SMART BAKE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 77: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART YOGURT.

RESPONSE: Admits and states that the applicant later abandoned its application before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 78: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART YOGURT based, at least in part, on GFA Brands, Inc.'s belief that SMART YOGURT is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 79: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART YOGURT based, at least in part, on the assertion that the SMART YOGURT mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 80: Admit that GFA Brands, Inc. stated that registration of SMART YOGURT would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 81: Admit that GFA Brands, Inc. asserted that registration of the mark SMART YOGURT would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 82: Admit that GFA Brands, Inc. opposed federal

registration of the mark SMART YOGURT, at least in part, because SMART YOGURT contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 83: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHOICE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 84: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART CHOICE based, at least in part, on GFA Brands, Inc.'s belief that SMART CHOICE is confusingly similar to SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 85: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART CHOICE based, at least in part, on the assertion that the SMART CHOICE mark was likely to be confused with SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 86: Admit that GFA Brands, Inc. stated that registration of SMART CHOICE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 87: Admit that GFA Brands, Inc. asserted that registration of the mark SMART CHOICE would seriously damage GFA Brands, Inc.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 88: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART CHOICE, at least in part, because SMART CHOICE contains the word "smart".

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 89: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART VEGAN.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 90: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART VEGAN based, at least in part, on GFA Brands, Inc.'s belief that SMART VEGAN is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 91: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART VEGAN based, at least in part, on the assertion that the SMART VEGAN mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 92: Admit that GFA Brands, Inc. stated that registration of SMART VEGAN would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 93: Admit that GFA Brands, Inc. asserted that registration of the mark SMART VEGAN would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 94: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART VEGAN, at least in part, because SMART CHOICE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 95: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART JUICE.

RESPONSE: Admits and states that the applicant later defaulted before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 96: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART JUICE based, at least in part, on GFA Brands, Inc.'s belief that SMART JUICE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 97: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART JUICE based, at least in part, on the assertion that the SMART JUICE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 98: Admit that GFA Brands, Inc. stated that registration of SMART JUICE would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 99: Admit that GFA Brands, Inc. asserted that registration of the mark SMART JUICE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 100: Admit that GFA Brands, Inc. opposed federal registration of the mark SMART JUICE, at least in part, because SMART JUICE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 101: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark COOKSMART.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 102: Admit that GFA Brands, Inc. opposed the federal registration of the mark COOKSMART based, at least in part, on GFA Brands, Inc.'s belief that COOKSMART is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 103: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark COOKSMART based, at least in part, on the assertion that that COOKSMART mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 104: Admit that GFA Brands, Inc. stated that registration of COOKSMART would interfere with GFA Brands, Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 105: Admit that GFA Brands, Inc. asserted that registration of the mark COOKSMART would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 106: Admit that GFA Brands, Inc. opposed federal registration of the mark COOKSMART, at least in part, because COOKSMART contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 107: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTFREEZE.

RESPONSE: Admits and states that the opposition was later dismissed before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 108: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMARTFREEZE based, at least in part, on GFA Brands, Inc.'s belief that SMARTFREEZE is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 109: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTFREEZE based, at least in part, on the assertion that the SMARTFREEZE mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 110: Admit that GFA Brands, Inc. stated that registration of SMARTFREEZE would interfere with GFA Brands Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 111: Admit that GFA Brands, Inc. asserted that registration of the mark SMARTFREEZE would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 112: Admit that GFA Brands, Inc. opposed the

registration of the mark SMARTFREEZE, at least in part, because SMARTFREEZE contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 113: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART NUGGETS.

RESPONSE: Admits and states that GFA later withdrew its opposition before any trial or decision on the merits.

REQUEST FOR ADMISSION NO. 114: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART NUGGETS based, at least in part, on GFA Brands, Inc.'s belief that SMART NUGGETS is confusingly similar to SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 115: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART NUGGETS based, at least in part, on the assertion that the SMART NUGGETS mark was likely to be confused with SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 116: Admit that GFA Brands, Inc. stated that registration of SMART NUGGETS would interfere with GFA Brands Inc.'s use of SMART BALANCE.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 117: Admit that GFA Brands, Inc. asserted that registration of the mark SMART NUGGETS would seriously damage GFA Brands, Inc.

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 118: Admit that GFA Brands, Inc. opposed the registration of the mark SMART NUGGETS, at least in part, because SMART NUGGETS contains the word "smart".

RESPONSE: Admits.

REQUEST FOR ADMISSION NO. 119: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART TREATS.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 120: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMART TREATS based, at least in part, on GFA Brands, Inc.'s belief that SMART TREATS is confusingly similar to SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 121: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART TREATS based, at least in part, on the assertion that the SMART TREATS mark was likely to be confused with SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 122: Admit that GFA Brands, Inc. asserted that registration of SMART TREATS would interfere with GFA Brands Inc.'s use of SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 123: Admit that GFA Brands, Inc. asserted that registration of the mark SMART TREATS would seriously damage GFA Brands, Inc.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 124: Admit that GFA Brands, Inc. opposed the registration of the mark SMART TREATS, at least in part, because SMART TREATS contains the word "smart".

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 125: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTBRAN.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 126: Admit that GFA Brands, Inc. opposed the federal registration of the mark SMARTBRAN based, at least in part, on GFA Brands, Inc.'s belief that SMARTBRAN is confusingly similar to SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 127: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMARTBRAN based, at least in part, on the assertion that the SMARTBRAN mark was likely to be confused with SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 128: Admit that GFA Brands, Inc. asserted that registration of SMARTBRAN would interfere with GFA Brands Inc.'s use of SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 129: Admit that GFA Brands, Inc. asserted that registration of the mark SMARTBRAN would seriously damage GFA Brands, Inc.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 130: Admit that GFA Brands, Inc. opposed the registration of the mark SMARTBRAN, at least in part, because SMARTBRAN contains the word "smart".

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 131: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART MILK.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 132: Admit that GFA Brands, Inc. opposed the federal

registration of the mark SMART MILK based, at least in part, on GFA Brands, Inc.'s belief that SMART MILK is confusingly similar to SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 133: Admit that GFA Brands, Inc. filed an Opposition against the federal registration of the mark SMART MILK based, at least in part, on the assertion that the SMART MILK mark was likely to be confused with SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 134: Admit that GFA Brands, Inc. stated that registration of SMART MILK would interfere with GFA Brands Inc.'s use of SMART BALANCE.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 135: Admit that GFA Brands, Inc. asserted that registration of the mark SMART MILK would seriously damage GFA Brands, Inc.

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

REQUEST FOR ADMISSION NO. 136: Admit that GFA Brands, Inc. opposed the registration of the mark SMART MILK, at least in part, because SMART MILK contains the word "smart".

RESPONSE: Because of the lack of readily accessible electronic or paper records, GFA can neither admit nor deny based upon reasonable investigation.

Dated this 29th day of February, 2012.

A handwritten signature in black ink, appearing to be "D. Smith", written over a horizontal line.

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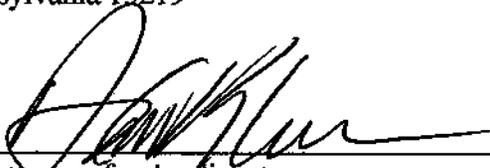
CERTIFICATE OF SERVICE

A copy of the foregoing GFA Brands Inc.'s Response to Promarks Brands Inc.'s Requests for Admission Directed to GFA Brands, Inc. was served on this 29th day of February, 2012, via regular U.S. Mail, with e-mail courtesy copies, upon:

Timothy P. Fraelich
JONES Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

and

Cecilia R. Dickson
JONES DAY
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Attorney for Applicant