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

Proceeding	91194974
Party	Defendant GFA Brands, Inc.
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**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

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

Opposers,

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

v.

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

GFA BRANDS, INC.,

Applicant.

**APPLICANT'S NOTICE OF FILING OF CERTIFIED TESTIMONY DEPOSITION
TRANSCRIPT AND EXHIBITS OF WILLIAM SHANKS**

Pursuant to 37 C.F.R. § 2.125(c) and Rule 703.01(k) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant GFA Brands, Inc. hereby files with the Board, and notifies Opposers of the filing of, the certified testimony deposition transcript and accompanying exhibits of William Shanks, whose testimony deposition was taken on April 23, 2013.

Dated this 13th day of September, 2013.

/s/ Johanna M. Wilbert
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by First Class U.S. Mail, postage prepaid, with a courtesy copy via e-mail, on this 13th day of September, 2013, to Counsel for the Opposers:

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*PROMARK BRANDS INC. VS.
GFA BRANDS, INC.*

*WILLIAM SHANKS
April 23, 2013*



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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
-----x
PROMARK BRANDS INC.,
Opposition Nos. 91194974(Parent) &

H.J. HEINZ COMPANY,
Opposition No 91196358,

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

Opposers,

-versus-

GFA BRANDS, INC.,

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

Applicant.
-----x

222 East 41st Street
New York, New York

April 23, 2013
2:18 p.m.

DEPOSITION of WILLIAM SHANKS, taken pursuant to
Notice, before Fran Insley, a Notary Public of the
States of New York and New Jersey.

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1 ----- I N D E X -----

2	WITNESS	EXAMINATION BY	PAGE
3	WILLIAM SHANKS	MR. CROSS	4
4		MS. GOTT	26

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7 ----- E X H I B I T S -----

8	SHANKS	DESCRIPTION	FOR I.D.
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18 (EXHIBITS TO BE PRODUCED)

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1 W I L L I A M S H A N K S,
2 having been first duly sworn by the
3 Notary Public, was examined and
4 testified as follows:

5

6 EXAMINATION BY

7 MR. CROSS:

8 Q. What is your full name?

9 A. It's William Shanks.

10 Q. Spelled in the normal way?

11 A. In the normal way.

12 Q. How old a man are you?

13 A. I am 54.

14 Q. What do you do for a living?

15 A. I'm a private investigator.

16 Q. Now, you and your firm assisted us
17 in investigating the use of Smart and Balance
18 on items in grocery stores, correct?

19 A. Correct.

20 Q. We are going to get to the results
21 of that investigation in a moment, but first
22 about your background. Did you go to college?

23 A. I did.

24 Q. Where?

25 A. Wayne State University in Detroit,

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SHANKS

Michigan.

Q. Did you get a degree?

A. I did.

Q. What was that degree?

A. I got a BFA in theater arts in 1980.

Q. Have you had any formal education beyond your bachelor's degree?

A. Yes, I had two years of graduate school at the University of Wisconsin in Milwaukee, also in the realm of theater arts.

Q. Where do you work currently?

A. I work currently from a home office in Newtown, Connecticut. I work for a firm called Marksmen, Inc.

Q. What is the business of Marksmen?

A. Marksmen is focused almost exclusively on trademark investigations and acquisitions of intellectual property and patent investigations and also assisting with copyright searches to a smaller degree.

Q. You said you work out of your home office. Does Marksmen have offices of its own?

A. Yes, they do.

Q. Where?

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SHANKS

A. Our main office is in Los Angeles in Glendale, California and our East Coast office is located in Chapel Hill, North Carolina.

Q. How long have you worked for Marksmen?

A. I have worked for Marksmen since about two months after it opened, spring of 1998.

Q. How is it that Marksmen got formed?

A. Several of us had previously been employed by a New York trademark investigative firm known as Kelly Pioneer Group, which I began working for in, I believe, January of 1996.

Q. What is your current position at Marksmen?

A. I am presently an investigations manager and designated lead investigator for Marksmen.

Q. How long have you had those titles?

A. I have had those titles since approximately 1999.

Q. What do those responsibilities include?

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A. They include case intake and a liaison with clients over potential work, strategizing with clients on how to determine use aspects of trademarks, patents, domain names. That can include senior use, first use, abandonment issues, locating witnesses.

I also supervise investigators and have trained most of our staff, but that came on after 1999 I believe.

Q. About how many investigations have you overseen in your career at Marksmen?

A. Certainly more than 10,000.

Q. How many of those involve investigating use of trademarks in one way, shape or form?

A. I would say that about 98 percent of our work is trademark related and the other 2 percent is devoted to patent and copyright work.

Q. Have you provided either deposition testimony or testimony in court before about your investigations?

A. Yes, I have.

Q. About how many times in court?

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SHANKS

A. In court on two occasions.

Q. And in depositions?

A. In depositions I would guess around ten to twelve altogether.

Q. Do you recall about when Quarles & Brady retained Marksmen for this dispute?

A. Yes. It was the spring, summer of 2011.

Q. And again, what was it that we had asked you to do?

A. The assignment was to visit several designated grocery stores, in particular demographic Metropolitan areas and to visit these stores and purchase consumable items that are packaged and would bear use of the marks, Smart and Balanced or Smart or Balanced.

Q. What were the two Metropolitan areas?

A. One was Miami, Florida and the other was the New York City area, but not Manhattan.

Q. What was your primary role in this investigation?

A. My primary role in this investigation was evaluating the request with

1 SHANKS

2 our folks in Chapel Hill, North Carolina, that
3 being Phoebe Taylor and John Shoenfelt, and
4 estimating a quote in time needed to accumulate
5 and report on the assignment.

6 Q. Who is the investigator that you
7 supervised for the New York area?

8 A. His name is Carlo Vogel.

9 Q. Have you worked with him before?

10 A. Many times.

11 Q. What is his relationship with
12 Marksmen? Is he an employee?

13 A. Carlo is an independent contractor,
14 but we use Carlo on almost a daily basis for
15 work in the trademark investigative realm.

16 MR. CROSS: Let's have this marked
17 as the next applicants exhibit. So this
18 will be Shanks Exhibit 6.

19 (Whereupon 7/15/11 report was marked
20 Shanks Exhibit 6 for identification as of
21 this date.)

22 Q. The court reporter has marked and
23 I'm handing you what has been marked as
24 Applicant Exhibit 6. Can you tell me what that
25 is, please?

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SHANKS

A. This is a web based report of our findings of the purchase efforts that -- the purchases that we made in the New York area of Smart Balance, the food product, the food items in several grocery stores.

Q. When was this? What is the date of this report?

A. The date on the report is July 15, 2011.

Q. When did the actual on the ground investigation take place that is summarized in this report?

A. The investigation took place in late June through a portion of early July.

Q. Who contributed to the report?

A. Carlo Vogel did the lion's share of the reporting within, as he was the investigator on the ground purchasing and documenting the product, and then I worked with Carlo in fashioning the report to be delivered to the client.

Q. Is that your signature that appears on the last page of the report?

A. Yes, it is.

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Q. And who was responsible for forwarding the report to Quarles & Brady?

A. It is done sort of electronically by virtue of me hitting a release button and then the attorney or paralegal who orders the report is notified by e-mail that their report is ready for pick up on the website.

Q. Is this a project where the investigator was to go in and observe what was there in the store or were there actual purchases made?

A. There were many purchases made.

MR. CROSS: Let's have this marked as the next exhibit. This will be Shanks Exhibit 7.

(Whereupon e-mail was marked Shanks Exhibit 7 for identification as of this date.)

Q. What is Exhibit 7?

MS. GOTT: Objection. Foundation.

Q. Well, we are going to find out. Do you know what Exhibit 7 is?

A. Exhibit 7 appears to be an e-mail from Phoebe Taylor in our Chapel Hill office to

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SHANKS

Johanna Wilbert at Quarles & Brady.

Q. What is it?

MS. GOTT: Objection.

Q. Go ahead.

A. Within is a listing in Excel spreadsheet format of all of the items that were purchased by Carlo Vogel in the New York area.

Q. Had you seen this document during the course of your investigation?

A. Yes.

Q. Is it the type of document that is normally produced in the ordinary course of an investigator's work?

A. It is in the normal course of any time that we are designated to accumulate as many products bearing particular mark or word.

Q. Was Exhibit 7 prepared in the ordinary course of Marksmen's business?

MS. GOTT: Objection. Foundation.

A. Yes, it was.

Q. Please take us -- based on your experience in dealing with reports such as this, please tell us what each of the various

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SHANKS

column headings mean.

A. Okay. Under column A is primarily just an identification for Carlo and his main contact points and his New York State PI license.

The item numbers are then -- Column B are the item numbers themselves that were purchased. Column C is a description of each of the products purchased. Column D is the date purchased. Column E is the location at which the product was purchased and Column F is the evidence bag number designation for each batch of products and which bag they actually ended in.

Q. Again, how do you know that is what each of these columns represent?

A. Because I instructed, after getting instruction from Quarles & Brady, to document and bag the evidence in a way that was organized and could be understood.

Q. You mentioned that there were photographs taken. Who took the photographs?

A. Carlo Vogel.

Q. What happened to the photographs?

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What happened to the photographs after they were taken?

MS. GOTT: Objection.

A. The photographs are -- they are organized by the location at which they were taken, i.e., A, B, C grocery stores and then delivered either via e-mail or CD format to the client.

MR. CROSS: Let's have this marked as the next exhibit. This will be Shanks Exhibit 8.

(Whereupon photograph was marked Shanks Exhibit 8 for identification as of this date.)

Q. I'm going to show you what the court reporter has marked as Exhibit 8. Can you tell me what that is?

MS. GOTT: Objection. Foundation.

A. This is a photograph of an A&P supermarket exterior and then subsequent photos are photographs of the products that were purchased in the New York area by our independent contractor Carlo Vogel.

Q. How do you know that is what these

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SHANKS

photographs are?

A. How do I know what they are?

Q. Yes.

A. Because I have seen them before.

Q. When did you first see them?

A. I first saw them at the time that the investigation was conducted when we were accumulating all the matter prior to delivering to Quarles & Brady.

Q. You had earlier mentioned that Marksmen was retained to conduct another investigation in addition to the one in the New York area, but the other one in Miami; is that right?

A. That's correct.

Q. What is the name of the people who had ultimate responsibility for the Miami investigation?

A. The ultimate responsibility at Marksmen or --

Q. At Marksmen.

A. The ultimate responsibility was initiated by Phoebe Taylor and John Shoenfelt who are no longer with our firm, but then

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SHANKS

ultimately the results were accumulated by
Phoebe and looked after by myself and Kate
Schrader in our Los Angeles office.

Q. What is Ms. Schrader's position with
Marksmen?

A. She an investigation manager in the
LA office.

Q. How long has she held that position?

MS. GOTT: Objection. Foundation.

A. She has held that position since
approximately 2002.

Q. How do you know she has held it that
long?

A. She was hired, I believe, in 2000 or
2001 initially as a bookkeeper and then
subsequent to that was a -- an investigator for
approximately two years prior to moving into
management, consumer vision.

Q. Have you worked with her throughout
that time?

A. I have.

Q. How is it how that you know her work
history?

A. Because we were in the same office

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SHANKS

space together.

Q. So you have personal experience with her?

A. Yes, at the time I lived in Los Angeles. I lived in Los Angeles until 2005.

Q. What are Ms. Schrader's general job responsibilities?

A. Many are shared by she and myself, case intake, evaluation of requests for feasibility of conducting the work, whether it's -- and estimating of fees for the work to be conducted. She also does a good deal of the end of the month billing examination.

MR. CROSS: Let's have this marked as the next exhibit. This will be Applicant's Shanks Exhibit 9.

(Whereupon report was marked Shanks Exhibit 9 for identification as of this date.)

Q. I'm going to show you what the court reporter has marked as Shanks Exhibit 9. Can you tell us what that is, please?

MS. GOTT: Objection. Foundation.

A. This is the brief report prepared by

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SHANKS

Kate Schrader and Phoebe Taylor regarding the purchases we made in the Miami, Florida area.

Q. How do you know that is what this is?

A. Because the introductory paragraph cites it. It cites it as, cites the instructions that were laid to bear, which was to visit several supermarkets in Miami, Florida and determine if they're marketing goods using the name Smart or Balance.

Q. Are Exhibits 6 through 9 the types of documents that Marksmen personnel and investigators, such as you and Ms. Schrader, prepare in the ordinary course of your job duties?

A. Yes, they are.

Q. As an investigator at Marksmen, do you and Ms. Schrader have an obligation to report accurately on the investigations that you supervise?

A. Yes, indeed we do.

Q. As supervisors, do you have knowledge about the investigations that you oversee?

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SHANKS

A. Yes.

Q. And do you routinely use records, such as Exhibits 6 through 9, to report to your clients about the information learned during the course of your investigations?

A. Yes, it's a daily occurrence.

Q. Did you and Ms. Schrader and others at Marksmen prepare Exhibits 6 through 9 during the ordinary course of your business at Marksmen?

A. Yes.

MR. CROSS: Let's have this marked as the next exhibit, please. This will be Shanks 10.

(Whereupon Proedge report was marked Shanks Exhibit 10 for identification as of this date.)

Q. I'm going to show you what the court reporter has marked as Exhibit 10, Shanks Exhibit 10. Can you tell me what that document is, please?

MS. GOTT: Objection. Foundation.

Q. Go ahead.

A. This appears to be the report

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SHANKS

drafted by Proedge Group regarding purchases of Smart and Balance products in the Miami area.

Q. What is Proedge Group?

A. Proedge is a Miami based private investigative firm.

Q. Had you worked with Proedge before their involvement in this investigation?

A. Yes, on many occasions.

Q. About how often have you worked with Proedge in a typical year?

A. In a typical year we probably use Proedge anywhere from six to a dozen times a year.

Q. The letter is addressed to Phoebe Taylor and John Shoenfelt. You've mentioned at least before Phoebe Taylor. I can't recall if you mentioned Mr. Shoenfelt?

A. Yes, I have.

Q. Ms. Taylor, who is she again?

A. She is the -- at the time of this report, was our client relations manager, customer service liaison and assisted John with the primary duty of setting up instructions for independent private investigators to conduct

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SHANKS

on-site work on our behalf in remote areas where we don't have our own staff.

Q. Is that an unusual aspect of your business or is it fairly commonplace where you contract with another investigative outfit to carry out certain aspects?

A. We subcontract out three or four or five times a week depending on the issue or the specialty or the location of the request.

Q. What do you know about the agencies with whom you subcontract before you decide to use them?

A. We first check to make sure they are licensed. We often ask investigative associations for recommendations in a particular area. If we don't know of anybody and if we enlist somebody's services and we are happy with their work, we have a constantly accumulating database of investigators that we will employ and we take notes as to the delivery time it took for them to provide product and the level of quality of the work done.

Q. You mentioned licensing. Is

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SHANKS

Marksmen licensed? Does the agency get licensed or individuals within it get licensed?

A. Yes, anybody that is working under the employ of Marksmen as an employee or an hourly employee is working under either the California licensure or the North Carolina licensure. I am licensed in both California and also in Connecticut, but I'm the sole employee in Connecticut.

Q. Is Mr. Vogel licensed?

A. He is. He is licensed in the State of New York.

Q. And you said that Proedje is licensed?

A. Yes.

MR. CROSS: Let's have these marked as the next three exhibits. So these will be Exhibits 11, 12 and 13.

(Whereupon photograph was marked Shanks Exhibit 11 for identification as of this date.)

(Whereupon photograph was marked Shanks Exhibit 12 for identification as of this date.)

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(Whereupon photograph was marked
Shanks Exhibit 13 for identification as of
this date.)

Q. The court reporter has marked and I
have handed you Exhibits 11, 12 and 13. Do you
recognize those exhibits?

A. Yes, they appear to be the photos of
the products purchased at the stores in the
Miami metropolitan area by Proedge.

Q. What does Exhibit 11 represent?

MS. GOTT: Objection. Foundation.

A. Exhibit 11 is the one that Smart
Balance is on the front?

Q. Correct.

A. It's superimposed -- not
superimposed. It's in the foreground and
behind it is a Publix grocery bag which denotes
the location that the product was purchased.

Q. Is that the location all of the
products depicted in Exhibit 11 were purchased?

MS. GOTT: Objection. Foundation.

A. It appears to be so.

Q. Take a look at Exhibit 12. Can you
tell the location of the products, where the

1 SHANKS

2 products were purchased from Exhibit 12?

3 A. The products here are in the
4 foreground of a Wal-Mart grocery bag that was
5 used to designate the location in which these
6 products were purchased.

7 Q. And Exhibit 13, what is the location
8 those products were purchased?

9 MS. GOTT: Objection. Foundation.

10 A. In the foreground again is a Smart
11 Balance peanut butter product and it's right
12 below a portion of a Winn Dixie grocery bag
13 which would denote where the products in this
14 set of photographs were purchased.

15 Q. In your experience in working in the
16 area of private investigations and in
17 particular working with Proedge, are Exhibits
18 10 through 13 the type of records that
19 investigators such as Proedge and Marksmen
20 prepare as an ordinary -- as part of their
21 ordinary course of business?

22 MS. GOTT: Objection. Foundation.

23 A. Yes, they are.

24 Q. Do the people who take the
25 photographs and prepare records such as

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SHANKS

Exhibits 10 through 13 have a responsibility to accurately report on the investigations that they conduct?

MS. GOTT: Objection. Foundation.

A. Yes, they do.

Q. And do the investigators who prepare records, such as Exhibits 10 through 13, have knowledge of the information about which they are reporting?

MS. GOTT: Objection. Foundation.

A. They do.

Q. And do you and other private investigators that you've worked with, such as Proedge, use records, such as Exhibits 10 through 13, to routinely report to your client about the information developed during the course of their investigations?

MS. GOTT: Objection. Foundation.

A. Yes.

Q. And were Exhibits 10 through 13 prepared and then used in the ordinary course of your business at Marksmen?

MS. GOTT: Objection. Foundation.

A. Yes, they were.

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MR. CROSS: I have no more questions. Thank you very much.

MS. GOTT: Can we take a break, please?

(Time noted: 2:45 p.m.)

(Brief recess taken.)

(Time noted: 2:52 p.m.)

EXAMINATION BY

MS. GOTT:

Q. Good afternoon, Mr. Shanks.

A. Hi.

Q. You're here today to testify in your personal capacity as a witness in this matter; isn't that correct?

A. Yes, to a certain degree.

Q. To what degree?

A. As a supervisor of the work.

Q. You're not testifying as a company representative of Marksmen; is that correct?

A. No, I am testifying as a company representative of Marksmen.

Q. Has Marksmen identified you as a witness to testify on its behalf?

A. In this case -- well, yes.

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Q. How did Marksmen identify you as a witness to testify on its behalf in this case?

A. By virtue primarily of my signatory on one of the reports and I am also identified as the lead investigator within the firm.

Q. Do you often testify as a company representative of Marksmen?

A. It's not frequent, but I have done so on several occasions.

Q. How long have you been a private investigator?

A. I have been a private investigator for 16 years.

Q. What was your undergraduate degree in?

A. My undergraduate degree was in theater arts.

Q. So you didn't receive training in school as a private investigator, did you?

A. In college?

Q. In college.

A. No.

Q. Did you receive any academic training as a private investigator?

1 SHANKS

2 A. Academic training, no.

3 Q. You started working for Marksmen in
4 1998; is that correct?

5 A. That's correct.

6 Q. And before that you testified you
7 worked for another investigative firm; is that
8 correct?

9 A. Yes.

10 Q. When did you start working for the
11 other investigative firm?

12 A. In January of 1996.

13 Q. What year did you graduate from
14 college?

15 A. I graduated in 1980.

16 Q. Did you work as a private
17 investigator between 1980 and 1996 as well?

18 A. No, I did not.

19 Q. What was your job during that time?

20 A. I was -- I began as -- I spent
21 approximately 13 years as an actor.

22 Q. So between 1980 and 1993 or so, you
23 spent time as an actor; is that accurate?

24 A. Actually I was still in graduate
25 school through the spring of 1983. I moved to

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New York City in the fall of 1983.

Q. So then between 1983 and 1996, you worked as an actor and then in 1996 was when you first became a private investigator?

A. That's correct.

Q. Mr. Shanks, did you personally conduct the investigation in this case?

A. The on ground investigation at the locations?

Q. Yes.

A. No.

Q. I believe you testified that Angelo -- I'm sorry, Carlo Vogel conducted the on ground investigation in New York; is that correct?

A. That's correct.

Q. Who conducted the on ground investigation in Florida, in Miami; is that the other market?

A. Yes.

Q. Who conducted that investigation?

A. The firm we hired was Proedge Group and the specific investigator was Barbara Lee.

Q. Were you with Barbara Lee when she

1 SHANKS

2 conducted her investigation?

3 A. No.

4 Q. Were you with Carlo Vogel when he
5 conducted his investigation?

6 A. No.

7 Q. You should have in front of you what
8 has been marked as Applicant Shanks Exhibit 7.
9 This exhibit includes a spreadsheet presumably
10 of the products that Carlo Vogel purchased in
11 his investigation; is that correct?

12 A. I'm looking for the right one.

13 Q. It's that one right there.

14 A. Yes, that's correct.

15 Q. How do you know that Carlo Vogel
16 purchased these products?

17 A. I know that Carlo Vogel purchased
18 these products because he so much as stated so
19 and he provided us with photos and receipts
20 from his efforts and additionally several
21 photographs of the product in his office.

22 Q. Do you see the photos that Carlo
23 Vogel took in any of these exhibits that have
24 been marked?

25 A. You mean any of this pile here?

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Q. Yes.

A. Yes.

Q. Which ones are the ones that Carlo Vogel took?

A. That would be Applicant Shanks 8.

Q. And the other photographs that have been marked as exhibits, he did not take those, correct?

A. You mean that are attached on different stapled piles here?

Q. Yes.

A. No, he did not take those.

Q. Did he take the photographs in Exhibit 8, every single one of these photographs?

A. To the best of my knowledge, he did.

Q. You don't really have knowledge one way or the other though, do you?

A. I have his word and his responsibility as an investigator to report the truth in the matter of the investigation and I take him at his word and I take it as proof based on what was accumulated and sent to our office.

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Q. The other photographs that have been marked as exhibits here, are these photographs then that were taken by Barbara Lee?

A. Correct.

Q. And those photographs are Shanks Exhibits 11, 12 and 13, correct?

A. That's correct.

Q. Other than what you can discern from the face of these exhibits themselves, you don't have any personal knowledge concerning the actual purchasing of these products; is that correct?

A. What do you mean by personal knowledge?

Q. You testified earlier that you did not accompany either Mr. Vogel or Ms. Lee in purchasing these products, correct?

A. Not in person, no.

Q. Did you accompany them not in person?

A. No, I didn't accompany them, period. Well, they may have been thinking of me, but I doubt it.

Q. I'm sure they were. Mr. Shanks, I

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would like to direct your attention to Shanks Exhibit number 8 and if you'll turn to the page that is marked in the lower right-hand corner GFA043115.

A. Okay.

Q. Can you describe this photograph for me, please?

A. This appears to be a photograph taken on the grocery shelf of two products side by side. One appears to be a Hood Simply Smart low fat milk and the other appears to be Smart Balance fat free milk. It looks like a half gallon container.

Q. Can you tell me what grocery store this photograph was taken in?

A. By the virtue of how this one is printed out, no.

Q. Why did Mr. Vogel take this photograph?

A. Why did he take the photograph? To show the relationship of two products bearing the use of the name of Smart on a grocery shelf in close proximity to one another.

Q. Where in the supermarket did these

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products appear?

A. Where in the supermarket?

Q. Yes.

A. It would be an assumption, but probably a fairly good one that they were in the dairy case.

Q. You don't know that for sure though because you weren't with Mr. Vogel; is that correct?

A. No, but they are adjacent to another carton of milk and another carton of milk, at least what appears to be cartons of milk. Maybe they are filled with mothballs, but I doubt it.

Q. You have purchased products in a grocery store before, haven't you, Mr. Shanks?

A. Yes.

Q. Are you familiar with Smart Ones frozen meals?

A. I am not.

Q. Do you know where in the supermarket frozen meals are generally kept?

A. Frozen meals would be kept in the freezer aisle or freezer cases.

1 SHANKS

2 Q. Is that the same section of the
3 supermarket where you would find this Hood
4 Simply Smart low fat milk?

5 A. I don't believe so. Milk is not
6 offered frozen, except as ice cream.

7 Q. In this picture Hood Simply Smart
8 low fat milk, it was photographed because the
9 word Smart appears on the packaging; is that
10 correct?

11 A. Correct.

12 Q. What other products are offered
13 under the Simply Smart trademark?

14 A. I do not know.

15 Q. So as you sit here today, you can't
16 tell me the extent to which the Simply Smart
17 mark is being used by Hood, can you?

18 A. Beyond low fat milk?

19 Q. Beyond low fat milk.

20 A. No.

21 Q. Does Simply Smart low fat milk
22 compete with frozen meals?

23 A. I don't know.

24 Q. Would you mistakenly pick up Simply
25 Smart low fat milk if you were shopping for

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frozen meals?

A. I may purchase both of them in the course of gathering products from a list from my wife.

Q. But if you were shopping for frozen meals, would you mistakenly pick up Simply Smart low fat milk instead of a frozen meal?

A. No.

Q. Are you aware of the geographic locations in which Simply Smart low fat milk is sold?

A. In its entirety?

Q. Yes.

A. The geographic location in its entirety, no.

Q. So as you sit here today, you can't tell me which geographic locations Hood Simply Smart low fat milk is sold in; is that correct?

A. Well, by virtue of the gathering of these photographs, I know that it's certainly available in the New York metropolitan area and I having lived in the Connecticut area which is slightly beyond in the exurbs and Hood milk is sold in our local grocery stores as well.

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Q. But you don't know whether it is sold in, let's say, Nebraska?

A. I do not.

Q. Or California?

A. I do not.

Q. Or Texas?

A. No.

Q. Turning to the next page in that exhibit, can you describe what is in this picture for me?

A. This picture appears to contain mini bags of Smart Balance popcorn and Orville Redenbacher popcorn in a box format.

Q. And why was this photo included in the photographs that were taken by Mr. Vogel?

A. One, it shows Smart Balance, which is one of the instructions was to locate any products bearing the use of Smart, which also includes the Smart Pop product on the shelf below.

Q. This photo is a little bit blurry, I think, but you can see that it says Orville Redenbacher Smart Pop; is that correct, what that packaging shows there?

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A. It appears to show that, yes. The logo looks the same as the one in the middle, which I recognize.

Q. Frozen meals are not offered for sale in the same section of the grocery store as you would find popcorn, are they?

A. Not to my knowledge.

Q. Is this Orville Redenbacher Smart Pop the only product or service for which Orville Redenbacher uses the Smart Pop mark?

A. I don't know.

Q. So as you sit here today, you can't tell me the extent to which Orville Redenbacher is using the Smart Pop mark in connection with the products; is that correct?

A. The extent of use beyond this particular product?

Q. Correct.

A. I don't. I don't know.

Q. Do you believe that Smart Pop popcorn competes with frozen meals?

A. Insofar as filling a stomach, it could compete, but I mean to what -- what do you mean compete; in what way?

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Q. If someone were going into the supermarket to purchase frozen meals, would they be likely to purchase this popcorn instead of their frozen meals?

A. If they had a craving for it instead. If they were on a diet and they decided to eat something else, they could conceivably walk over and pick this up. I wouldn't confuse necessarily Smart Pop popcorn with a frozen dinner.

Q. The extent to which food in general fills your belly, if we take that definition of competition, everything in a grocery store would compete with each other; is that correct?

MR. CROSS: Objection. Incomplete hypothetical.

A. Can you rephrase that or at least repeat it?

Q. I believe when I asked you whether Smart Pop popcorn competes with frozen meals, you said well, it does to the extent to which it is a food product that fills your belly; is that correct?

A. Yes.

1 SHANKS

2 Q. And to the extent to which there are
3 food products that fill your belly, every
4 product in the grocery store would fit that
5 definition; isn't that correct?

6 A. Every product in the grocery store
7 could compete for your grocery cart in terms of
8 being subsequently purchased by you as a
9 customer?

10 Q. Sure. Yes?

11 A. Sure.

12 Q. If you were a manufacturer or
13 producer of popcorn, would you generally view
14 your competition as frozen meals?

15 A. I don't know. I don't know what
16 other products of a popcorn producer produces
17 besides popcorn. Is it their exclusive
18 product?

19 Q. If popcorn is their exclusive
20 product, is it your understanding that it would
21 compete with every food product in the grocery
22 store?

23 A. I'm sorry, repeat that one more
24 time, sorry.

25 Q. If popcorn is their exclusive

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product?

A. The manufacturer?

Q. The manufacturer's exclusive product, in your opinion, would every food product in the grocery store be their competitors?

A. It could be by virtue of the beauty of the label or anything else. I mean yeah, I don't know. I don't market the product. So I only know what happens to me when I go into a grocery store and I'm hungry.

MR. CROSS: If it's not clear, he is being offered solely to show the results of the investigation. He's not an expert in marketing or consumer behavior. You're completely wasting all of our time. I don't know why you persist in this line of questioning.

MS. GOTT: Counsel, I'm merely trying to figure out the extent of his investigation and what these photographs are serving to do in this case.

MR. CROSS: Please move it along. We all have planes to catch. We are all

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billing our clients ridiculous sums to
listen to you going through this line of
questioning.

Q. Mr. Shanks, if you'll turn to Shanks
Exhibit 11, please. In the upper right-hand
corner there is a number, if you turn to page
GFA043152.

A. Okay.

Q. This page shows a photo of a Glaceau
Smart water product; is that correct?

A. That's correct.

Q. You did not purchase this product,
did you?

A. Me personally?

Q. You, personally, did not purchase
this product?

A. No.

Q. To your knowledge, is water offered
for sale in the same section as a grocery store
as frozen meals?

MR. CROSS: This is absurd. Could
you move on, please? We will stipulate
that none of these products, except for
the one that I think is involving ice

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cream, are sold in the frozen food section of the grocery store.

If you want the TTAB to read this, which is solely argument portion of the transcript, that's your choice, but I am tired of it. I think it's a complete waste of time.

You're being abusive to us and the witness by going through this and I wish you would move on.

A. What was the question?

Q. That this water product is not offered for sale in the same section as the store as frozen meals and I believe counsel stipulated to that, so we will accept that stipulation.

MS. GOTT: Counsel, are you also willing to stipulate that the products in this investigation, the photos that are presented here do not identify what other products each of these marks that appear in the picture is being used for?

MR. CROSS: I don't understand your question. You better make your own record

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here. I don't understand what you are getting at. If it's that important to you, you better figure out a way to prove it, whatever the point is you're trying to prove. I will stipulate that the photos show what they show. Does that help?

MS. GOTT: Sure.

Q. Mr. Shanks, in this photo that appears at GFA043152, you can't tell me just by looking at this photo the extent of the products to which the Smart Water mark is used on; is that correct?

MR. CROSS: Objection as unintelligible.

A. The extent beyond this particular bottle of water?

Q. Yes.

A. No.

Q. Mr. Shanks, based on this photo, you cannot tell me the length of time in which this Smart Water product has been on the market; is that correct?

A. That wasn't my job. It wasn't to determine the length of use, but no, I can't

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tell you that.

Q. And based on this photo, you can't tell me the geographic locations in which this product is sold other than that this product was sold in the Miami market; is that correct?

A. As far as the assignment, sure.

Q. And that's -- the same is true for each of the photos in Shanks Exhibits 11, 12, 13 and 8; is that correct?

A. That's correct.

Q. And it is also true that based on these photos, you cannot tell me the degree to which the public is aware that these products are in the market; is that correct?

A. I wasn't hired to give an opinion as to the consumer's awareness of the products.

Q. So based on these photos, you can't tell me the extent to which consumers are aware of any of these products; is that correct?

A. That's what I just said.

Q. If you'll turn to the page in the same exhibit that is marked GFA043159. This product, this photograph shows a Weight Watchers Smart Ones teriyaki chicken and

1 SHANKS

2 vegetables frozen meals; is that correct?

3 A. It appears to, yes.

4 Q. Do you know where in the supermarket
5 this product was purchased?

6 A. By virtue of the box, no. Actually
7 I can see down below. It says "Keep Frozen."

8 Q. In all of these exhibits, Shanks
9 Exhibit 8, Shanks Exhibits 11, 12 and 13, how
10 many products are frozen products?

11 A. Let's see. In number 11, I don't
12 know about Smart Balance butter sticks. I know
13 that my wife freezes butter to keep it fresh.
14 I don't know about the Ronzoni pasta. I can't
15 tell. The only product that I know that
16 Breyers makes is ice cream, so I see some ice
17 cream bars called CarbSmart. I suppose the
18 Smart sausages could be frozen, but I don't
19 know. I don't know about the Winn Dixie Smart
20 Eggs. I don't know if that's a frozen product
21 or a dairy product.

22 I don't know about this Balance Bar,
23 but that doesn't say Smart on it. I don't know
24 whether that's a frozen dessert or regular
25 dessert. Okay.

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Q. So you've reviewed all the exhibits and you've identified the products that may be frozen based off of the face of the exhibit; is that correct?

A. Yes.

Q. But you can't say for sure whether any of these products are actually frozen because you didn't purchase them personally, did you?

A. I didn't purchase them personally.

Q. Your investigators were instructed to travel to stores and to walk the aisles of the stores to review all products for sale, specifically looking for any items with the word Smart or Balance within the product's name; is that correct?

A. That's correct.

Q. Do you believe that your investigators conducted a thorough investigation?

A. I believe they conducted as thorough an investigation as they could of products that were available to the naked eye.

Q. So is it --

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A. But there is always room for error. There are a lot of products on a product shelf. It takes a lot of searching to find stuff on some occasions and sometimes it's right in front of you.

Q. Do you believe that the products that are pictured in each of these exhibits, Exhibits 8, 11, 12 and 13 are reflective of the products in the market that contain the word Smart in them?

A. I would hazard a guess that there is quite a few more, but that's what we found on the occasions of these trips at these stores.

Q. The investigators visited the frozen foods aisles of the grocery stores; did they not?

A. They did.

Q. We can tell that because there are photographs here of frozen meals, correct?

A. Also Breyers ice cream.

Q. If there were other frozen meal products that contained the name Smart in the product name, would you expect to see that in one of these photographs?

1 SHANKS

2 A. Yes.

3 Q. Had you ever heard of the Smart Ones
4 mark before becoming involved in this
5 investigation?

6 A. No.

7 Q. So you, yourself, were not aware
8 that Smart Ones is a brand of frozen meals?

9 A. I was not aware.

10 Q. Approximately how much time did your
11 investigator spend in each store?

12 A. I know we estimated approximately
13 six hours per store for the overall
14 investigation, which included travel time and
15 shopping and reportage thereafter. I'm sure it
16 varied from store to store.

17 Q. But on average they spent --

18 A. I don't have an opinion about that.
19 I never asked them how much time they actually
20 spent in the store. I don't know.

21 Q. Is Carlo Vogel still an employee
22 with Marksmen?

23 A. He's not an employee of Marksmen.
24 He's an independent contractor that we use.

25 Q. Is he still an independent

1 SHANKS

2 contractor for Marksmen?

3 A. He is indeed.

4 Q. And Barbara Lee, is she still an
5 employee of Proedge?

6 A. Yes.

7 Q. To your knowledge, there is no
8 reason why either of them couldn't be here
9 today?

10 A. I don't know. I wasn't -- they
11 weren't requested.

12 MS. GOTT: If we can take a short
13 break.

14 MR. CROSS: Whatever you like.

15 MS. GOTT: Let's take a short break.

16 Five minutes.

17 (Time noted: 3:30 p.m.)

18 (Brief recess taken.)

19 (Time noted: 3:36 p.m.)

20 Q. Mr. Shanks, were you ever instructed
21 on how to conduct your investigation?

22 A. Were we given instructions by the
23 client?

24 Q. Yes.

25 A. Yes.

1 SHANKS

2 Q. Did the client instruct you how to
3 carry out your investigation?

4 A. To what extent do you mean?

5 Q. In any extent.

6 A. They requested obviously that we go
7 to the grocery stores, look for said products
8 with Smart and Balance and document use, save
9 the receipts. I think we agreed with them to
10 create a spreadsheet of the stuff that was
11 purchased.

12 I know that we interfaced with them
13 in terms of the estimate of fees, consulting
14 with them so far as what it would probably
15 take, the unknowns in the New York area and any
16 metropolitan area in terms of the estimate of
17 fees can vary due to travel time.

18 Q. Did GFA Brands or anyone else
19 instruct you which stores to go to to conduct
20 your investigation?

21 A. They designated at least initial
22 stores that they were interested in.

23 Q. What were the stores that they
24 designated?

25 A. I believe they are the ones that we

1 SHANKS

2 visited.

3 Q. In the New York market, Manhattan
4 was excluded from the geographic scope of the
5 investigation; is that correct?

6 A. It was. And I don't remember why.

7 Q. Have you ever heard of a company
8 called Ipsos, I-P-S-O-S?

9 A. No.

10 Q. So just to summarize with respect to
11 the photos that appear in Exhibits 8, 10, 11
12 and 12, you did not personally purchase any of
13 the products in these photographs, correct?

14 MR. CROSS: This has been asked and
15 answered. If you're going to replot old
16 ground, I'm going to object. Please move
17 on.

18 A. I didn't personally purchase any of
19 the items, no.

20 Q. Other than the individual products
21 that appear in each of these photographs that
22 contain the name Smart, you can't tell me
23 whether there are any other products that
24 contain the same name; is that correct?

25 MR. CROSS: This has been asked or

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answered more than once. Please move on.

A. I can't tell you whether they --

Q. Whether there are any products other than the ones that appear in these photographs that use the same names that appear in these photographs?

MR. CROSS: Are you intentionally trying to make me late for my flight by going through this?

MS. GOTT: No, counsel.

MR. CROSS: Move on.

A. I can't say yea or nay. It stands to reason there are more because not the same products were found at each of the stores. Some of the same products were. Some different products were found in different locations.

Q. You're not aware of the length of time in which any of the products that are in these photographs have been on the market; is that correct?

MR. CROSS: Asked and answered.

Move on.

A. No.

Q. You're not aware of the annual sales

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for any of the products in these photographs,
correct?

MR. CROSS: That's absurd. Move on.

A. No.

Q. You're not aware of the annual
advertising expenditures for any of the
products in these photos, correct?

A. No.

Q. And you're not aware, other than the
extent to which these products were purchased
either in Miami or New York, the geographical
location in which these products are sold; is
that correct?

A. The full extent, the full geographic
extent?

Q. The full geographic extent?

A. No.

Q. You didn't conduct a study of the
degree to which the public is aware of any of
the products in these photographs, correct?

A. I wasn't hired to do a study.

MR. CROSS: Please move on. I'll
stipulate he is here as an investigator,
not as a survey expert.

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SHANKS

MS. GOTT: I have no further
questions.

MR. CROSS: Neither do I.

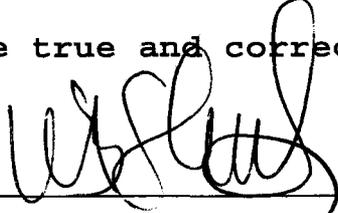
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A C K N O W L E D G M E N T

STATE OF *CT.*)
) ss.:
COUNTY OF *FAIRFIELD*

I, WILLIAM SHANKS, hereby certify that I
have read the transcript of my testimony taken
under oath in my deposition on the 23rd day of
April, 2013; that the transcript is a true, complete
record of my testimony and that the answers on the
record as given by me are true and correct.



WILLIAM SHANKS

Signed and subscribed to before
me this *13TH DAY* day of
, 2013.



Notary Public of the State of

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C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the Deposition of WILLIAM SHANKS was held before me on the 23rd day of April, 2013; that said witness was duly sworn before the commencement of testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Deposition of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of April, 2013.



FRAN INSLEY

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PRIVILEGED AND CONFIDENTIAL

July 15, 2011

Johanna Wilbert
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497
UNITED STATES

Re: SMART AND BALANCE PROJECT (NEW YORK)
Registrant/Company Info: Shop Rite / Stop N Shop / A&P
Provided address/phone: New York Metro Area (excluding Manhattan and New Jersey)
Client Matter: QBLLP-ACTIVE.FID35301295
File Number: 63314

Dear Johanna:

Our office received your request on June 20, 2011, instructing us to visit three supermarkets in the New York City area (excluding Manhattan and New Jersey) and purchase every item that makes use of either the word SMART or BALANCE PROJECT.

On July 11, 2011, we forwarded you the product samples obtained and related inventory spread sheet lists.

INVESTIGATION CONCLUDED PENDING ADVISEMENT.

Shop Rite / Stop N Shop / A&P - New York Metro Area (excluding Manhattan and New Jersey)

A&P - 5661 Riverdale, Bronx, NY 10471

On June 25, 2011 we visited the 5661 Riverdale, Bronx location of A&P.



GFA043139



We found many of the SMART BALANCE products for sale and purchased a sample peanut butter.

We observed numerous products that made use of the word SMART and purchased representative items bearing the word. We did not observe any products that made use of the word BALANCE exclusively at this location.

We observed that a milk product, "Simply Smart," was stocked directly next to a SMART BALANCE milk product, as shown below:



We observed that a popcorn product, "Smart Pop," was stocked directly below a SMART BALANCE popcorn product, as show below:



Super Stop & Shop - 1710 Avenue Y, Brooklyn, NY 11235

On June 28, 2011 we visited the 1710 Avenue Y, Brooklyn location of Stop & Shop.



We found many of the SMART BALANCE products for sale and purchased a sample peanut butter.

We observed numerous products that made use of the word SMART and purchased representative items bearing the word. We found several products that made use of the word BALANCE and purchased representative items.

We observed that the "Smart Pop" popcorn was in the same section as the SMART BALANCE popcorn, but they were not stocked directly next to or above or below each other.

We observed that "Earth Balance" spread was stocked on the same shelf as the SMART BALANCE spread, but with four differently branded items in between.

We observed that the "Simply Smart" milk was stocked in the same section as the SMART BALANCE milk, but with two to three differently branded milks in between.

Shop Rite - 1080 McDonald Avenue, Brooklyn, NY 11230

On June 28, 2011, we visited the 1080 McDonald Avenue, Brooklyn, Shop Rite supermarket:



We found many of the SMART BALANCE products for sale and purchased a sample peanut butter.

We observed numerous products that made use of the word SMART and purchased representative items bearing the word. We found several products that made use of the word BALANCE and purchased representative items.

We noted that in a specialty organic section, tubs of "Earth Balance" spreads were stocked directly next to the SMART BALANCE spread, as shown below:



Note that in the regular dairy section of the location we observed the SMART BALANCE spread, but **not** the "Earth Balance" spread.

We observed that the "Simply Smart" milk was stocked directly below the SMART BALANCE milk, as shown below:



We did not observe the "Smart Pop" popcorn product for sale at this location.

We inventoried the purchases we made in a spread sheet and sealed the products in marked evidence bags. Included in the spread sheet and the evidence bags are the receipts for the purchases. We have already forwarded you the product samples and inventory spread sheets.

Please refer to the provided inventory spread sheets for detailed descriptions of all the items we purchased.

Pending further advisement from you, we have concluded our investigation of SMART AND BALANCE PROJECT in NEW YORK AREA . If you have further need of our services on this or any other matter, please contact us.

Best Regards,

Bill Shanks

Marksmen Contact: Bill Shanks
Email: bshanks@marksmen.com
Phone: (203) 426-6469

cv

GFA043143

Opposition Nos. 91194974 (Parent) and 91196358
PROMARK BRANDS INC., & H.J. HEINZ COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

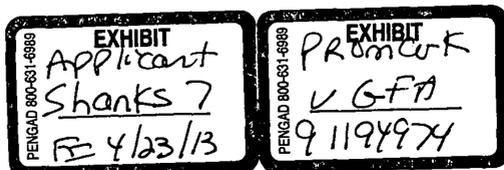
From: Phoebe Taylor <ptaylor@marksmen.com>
Sent: Friday, July 1, 2011 9:58 AM
To: Wilbert, Johanna M. <johanna.wilbert@quarles.com>
Cc: Cross, David R. <David.Cross@quarles.com>; Levine, Marta S. <marta.levine@quarles.com>; John Shoenfelt <jshoenfelt@marksmen.com>; cases@marksmen.com (cases@Marksmen.com)
Subject: Re: Smart Balance project
Attach: Case 63314 Smart and Balance Spreadsheet NY.xls; ATT00001..htm

Johanna,

I have attached a spreadsheet of the product our NY investigator purchased. FYI: This spreadsheet is also included with the shipment.

In regard to the FL investigator, he is still making the purchases.

Best, Phoebe



GFA043131

	A	B	C	D	E	F
1	Carlo Vogel (for Marksmen, Inc.)					
2	NYS PI no. 11000118756		06/30/11			
3	PO Box 1111					
4	New York, NY 10276					
5	tel. 718-344-9866					
6						
7	RE: SMART AND BALANCE PROJECT (New York)					
8						
9	Case no. 63314	ITEM NO.	DESCRIPTION	DATE PURCHASED	LOCATION PURCHASED	EVIDENCE BAG NO. (6 bags total)
10						
11		1	white envelope containing receipt	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
12		2	SMART BALANCE peanut butter	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
13		3	Hood Simply SMART 1% lowfat milk	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
14		4	Toufayan Bakeries SMARTbagel	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
15		5	SMART Beat healthy fat free non-dairy slices	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
16		6	Kellogg's SMART Start cereal	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
17		7	Orville Redenbacher's SMART Pop! popping corn	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
18		8	Little Debbie Snacks Fig Bars Snack SMART	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-1
19		9	SMART Deli Bologna Style veggie protein slices	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
20		10	SMART Deli Roast Turkey Style veggie protein slices	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
21		11	SMART Deli Baked Ham Style veggie protein slices	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
22		12	SMART Strips Chick'n Style Strips seasoned veggie strips	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
23		13	WeightWatchers SMART Ones Classic Favorites Macaroni & Cheese	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
24		14	WeightWatchers SMART Ones Classic Favorites Shrimp Marinara	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
25		15	WeightWatchers SMART Ones Classic Favorites Salisbury Steak	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
26		16	WeightWatchers SMART Ones Classic Favorites Lasagna Florentine	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
27		17	WeightWatchers SMART Ones Classic Favorites Spaghetti/Meat Sauce	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
28		18	WeightWatchers SMART Ones Classic Favorites Lasagna Bake/Meat Sauce	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2

	A	B	C	D	E	F
29		19	WeightWatchers SMART Ones Classic Favorites Swedish Meatballs	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
30		20	WeightWatchers SMART Ones Classic Favorites Creamy Rigatoni/Broccoli/Chicken	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
31		21	WeightWatchers SMART Ones Classic Favorites Traditional Lasagna/Meat Sauce	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
32		22	WeightWatchers SMART Ones Classic Favorites Broccoli and Cheddar Roasted Potatoes	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
33		23	WeightWatchers SMART Ones Classic Favorites Angel Hair Marinara	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
34		24	WeightWatchers SMART Ones Classic Favorites Pasta with Ricotta and Spinach	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
35		25	WeightWatchers SMART Ones Classic Favorites lasagna Florentine (duplicate)	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
36		26	WeightWatchers SMART Ones Bistro Selections Homestyle Turkey Breast	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
37		27	WeightWatchers SMART Ones Bistro Selections Meatloaf	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
38		28	WeightWatchers SMART Ones Bistro Selections Chicken Santa Fe	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
39		29	WeightWatchers SMART Ones Anytime Selections Cheese Pizza Minis	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
40		30	WeightWatchers SMART Ones Anytime Selections Pepperoni Pizza Minis	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
41		31	WeightWatchers SMART Ones Anytime Selections Mini Cheeseburger	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
42		32	WeightWatchers SMART Ones Morning Express Stuffed Breakfast Sandwich	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
43		33	WeightWatchers SMART Ones Brownie A La Mode	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
44		34	WeightWatchers SMART Ones Chocolate Eclair	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
45		35	WeightWatchers SMART Ones Signature Sundaes Chocolate Chip Cookies Dough Sundae	6/25/2011	A&P - 5661 Riverdale Ave., Bronx, NY 10471	63314-2
46		36	white envelope containing receipt and Simply SMART milk advertisement	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
47		37	SMART BALANCE peanut butter	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
48		38	Hood Simply SMART fat free milk	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
49		39	Kellogg's SMART Start cereal	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3

	A	B	C	D	E	F
50		40	Orville Redenbacher's SMART Pop! popping corn	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
51		41	SMART Beat healthy fat free non-dairy slices	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
52		42	SMARTfood popcorn	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
53		43	BALANCE bar Bare	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
54		44	BALANCE bar Gold	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
55		45	BALANCE bar	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
56		46	SMART Dogs Veggie Protein Links (printed B&W image of product)	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
57		47	SMART Sausages Italian Style veggie protein sausages (printed B&W image of product)	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-3
58		48	earth BLANCE natural buttery spread original	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
59		49	Ronzoni SMART Taste pasta	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
60		50	Glaceau SMARTwater	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
61		51	Nature's Path Organic SMART Bran	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
62		52	SMART Wings Buffalo veggie protein wings	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
63		53	SMART Tender's Lemon Pepper veggie protein tenders	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
64		54	SMART Ground Original veggie protein crumbles	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
65		55	SMART Deli Roast Turkey Style veggie protein slices	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
66		56	SMART Strips Chick'n Style Strips seasoned veggie strips	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
67		57	SMART Bacon veggie protein strips	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
68		58	WeightWatchers SMART Ones Satisfying Selections Ziti with Meatballs bag (printed B&W image of product)	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
69		59	WeightWatchers SMART Ones Classic Favorites Chicken Enchiladas Suiza	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
70		60	WeightWatchers SMART Ones Bistro Selections Meatloaf	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4

	A	B	C	D	E	F
71		61	WeightWatchers SMART Ones Fruit Inspirations Orange Sesame Chicken	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
72		62	WeightWatchers SMART Ones-Artisan Creations Pepperoni pizza	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
73		63	WeightWatchers SMART Ones Anytime Selections Quesadilla	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
74		64	WeightWatchers SMART Ones Morning Express Breakfast Quesadilla	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
75		65	WeightWatchers SMART Ones Key Lime Pie	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
76		66	WeightWatchers SMART Ones Signature Sundaes Chocolate Chip Cookies Dough Sundae	6/28/2011	Stop&Shop - 1710 Avenue Y, Brooklyn, NY 11235	63314-4
77		67	white envelope containing receipt	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
78		68	SMART BALANCE peanut butter	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
79		69	Hood Simply SMART chocolate fat free milk	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
80		70	Kellogg's SMART Start cereal	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
81		71	Orville Redenbacher's SMART Pop! popping corn	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
82		72	SMART Beat healthy fat free non-dairy slices	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
83		73	SMART food popcorn	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
84		74	BALANCE bar Bare	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
85		75	BALANCE bar Gold	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
86		76	BALANCE bar	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
87		77	SMART Dogs Veggie Protein Links (printed B&W image of product)	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
88		78	SMART Links Breakfast Sausage Style veggie protein links (printed B&W image of product)	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-5
89		79	earth BALANCE natural buttery spread made with olive oil	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
90		80	Glacéau SMARTwater	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
91		81	SMART Wings Honey BBQ veggie protein wings	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6

	A	B	C	D	E	F
92		82	SMART Tenders Savory Chick'n veggie protein tenders	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
93		83	SMART Ground Original veggie protein crumbles	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
94		84	SMART Deli Roast Bologna Style veggie protein slices	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
95		85	SMART Strips Chick'n Style Strips seasoned veggie strips	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
96		86	SMART Bacon veggie protein strips	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
97		87	WeightWatchers SMART Ones Satisfying Selections Chicken with Broccoli & Cheese bag (printed B&W image of product)	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
98		88	WeightWatchers SMART Ones Classic Favorites Santa Fe Style Rice & Beans	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
99		89	WeightWatchers SMART Ones Bistro Selections Chicken Parmesan	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
100		90	WeightWatchers SMART Ones Morning Express Stuffed Breakfast Sandwich	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
101		91	WeightWatchers SMART Ones Artisan Creations Four Cheese pizza	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
102		92	WeightWatchers SMART Ones Anytime Selections Mini Cheeseburger	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
103		93	WeightWatchers SMART Ones Key Lime Pie	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6
104		94	WeightWatchers SMART Ones Signature Sundaes Peanut Butter Cup Sundae	6/28/2011	ShopRite - 1080 McDonald Ave., Brooklyn, NY 11230	63314-6



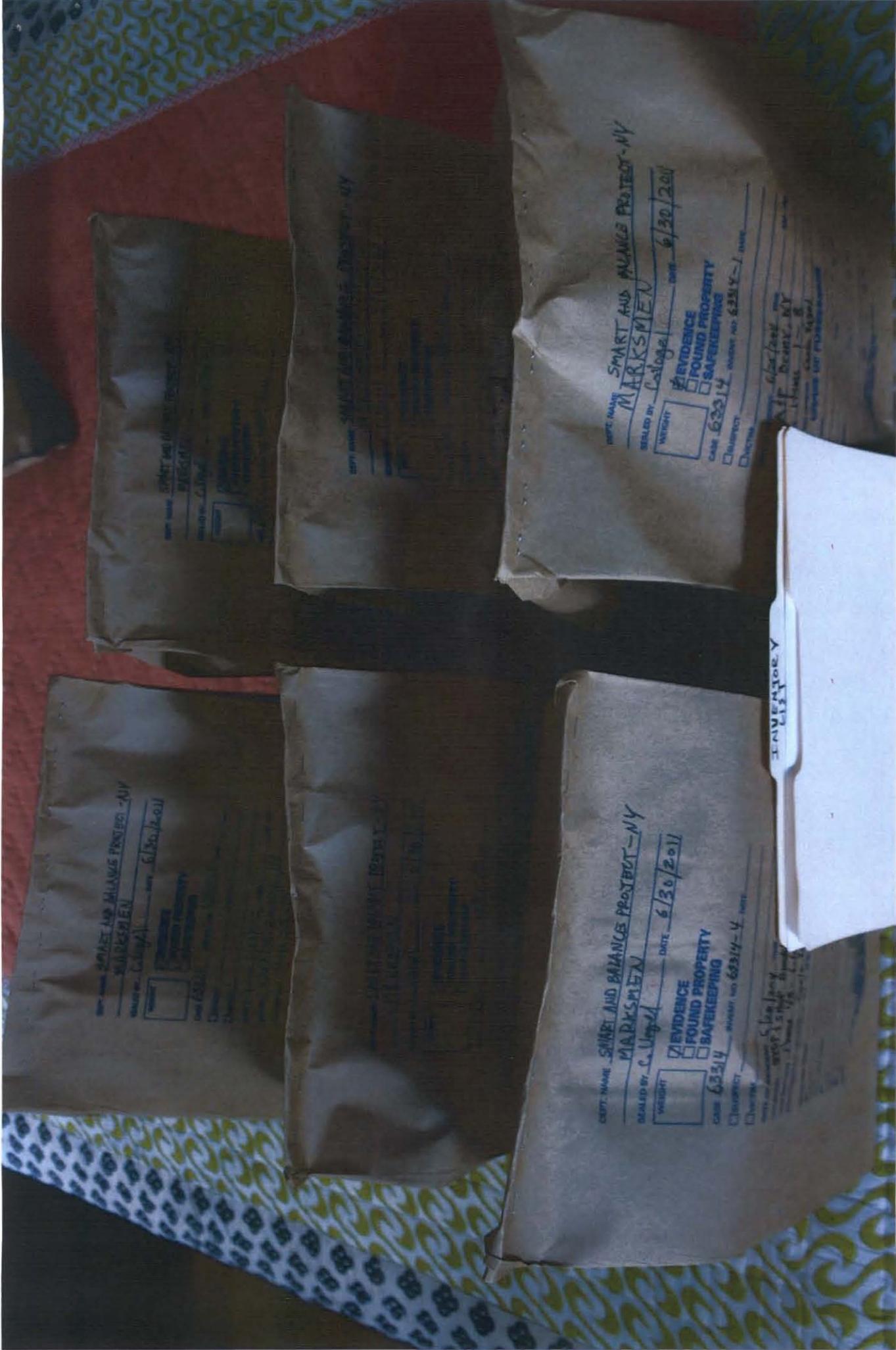
GFA043108

EXHIBIT
PROMARK
v. GFA
9/19/13
PENGAD 800-631-6989

EXHIBIT
Applicant
Shenks &
FE 4/23/13
PENGAD 800-631-6989



GFA043109



DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
 FOUND PROPERTY
 SAFEKEEPING

DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
 FOUND PROPERTY
 SAFEKEEPING

DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
 FOUND PROPERTY
 SAFEKEEPING

DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
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 SAFEKEEPING

DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
 FOUND PROPERTY
 SAFEKEEPING

DEPT. NAME SMART AND BALANCE PROTECT-NY
MARKSMEN
SERIALIZED BY C. Unger DATE 6/30/2011
CASE 63314
 EVIDENCE
 FOUND PROPERTY
 SAFEKEEPING

INVENTORY

GFA043110



GFA043112

05051 40628 13005
0983 6481 1538



With Simply Smart[®] Milk, You Can Have it All.[™]

- ✓ Fat Free Milk that tastes like 2% milk
- ✓ 1% Lowfat Milk that tastes like whole milk
- ✓ More protein and calcium than whole milk
- ✓ No Artificial Growth Hormones*
- ✓ Chocolate Fat Free Milk contains no high fructose corn syrup and no artificial sweeteners

Visit BeSimplySmart.com for fitness and nutrition tips and money-saving coupons

* To satisfy our consumers, our farmers pledge to produce milk from cows not treated with artificial growth hormones.



GFA043113



GFA043114



FLUORIDATED MILK
\$3.69
\$3.69

FLUORIDATED MILK
BETTER PRICE
PROJECT
AS LOW AS
\$6.00
2/\$6.00

Simply Smart
1% Lowfat Milk
2% Less Fat Than Whole Milk

FLUORIDATED MILK
\$3.69
\$3.69

FLUORIDATED MILK
BETTER PRICE
PROJECT
AS LOW AS
\$6.00
2/\$6.00

Simply Smart
1% Lowfat Milk
2% Less Fat Than Whole Milk

SMART BALANCE
Fat Free Milk
Calcium

SMART BALANCE
Fat Free Milk
Calcium

\$3.99

\$3.99

\$4.19

\$4.19

GFA043115



GFA043116



Smart Dogs[®]

Good Source of Protein

ZERO FAT

NATURALLY CHOLESTEROL FREE
Per Serving

(K) PAREVE

NET 12 OZ (340g)

Veggie Protein Links



KEEP REFRIGERATED

Serving Suggestion

GFA043117

Smart Sausages



✓ **Excellent Source of Protein**
see nutrition information for sodium content

Italian Style
veggie protein sausages



0513 112400-1 1732
SELL BY SEP 01 2011
PAREVE

V02-09

IMPORTANT: MUST BE KEPT REFRIGERATED TO MAINTAIN SAFETY

F3474b

Serving Suggestion

NET WT 12 OZ (340g)

GFA043118



Smart Ones®

390 Calories | 98 Fat | 68 Fiber | 25g Protein

30% LARGER SERVING*

SATISFYING SELECTIONS

Ziti with Meatballs & Cheese
in marinara sauce

10 SERVINGS

GFA043119



GFA043120

Smart Dogs



Good Source of Protein

ZERO FAT

NATURALLY CHOLESTEROL FREE per Serving

(K) PAREVE

NET 12.0Z (340g)

Veggie Protein Links



GFA043121

Smart Links[®]

Breakfast Sausage Style

Veggie Protein Links

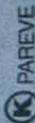


10 Grams of Protein in each serving

NATURALLY CHOLESTEROL FREE

see nutrition information for sodium content

NEW LOOK
Same Great Taste!



NET WT 6 OZ (170g)



Serving Suggestion
V10-05

GFA043122



GFA043123

NEW!

WeightWatchers®
Smart Ones®

340 Calories | 8g Fat | 3g Fiber | 31g Protein

30% LARGER SERVING

SATISFYING SELECTIONS™

Chicken with Broccoli & Cheese

white meat chicken with rice and broccoli in a cheddar cheese sauce

9

PointsPlus® value

TM



COOK THOROUGHLY

GFA043124



PO Box 10038
Glendale, CA 91209

Voice: 800.558.8838
Fax: 888.558.4558

International
Voice: +818.637.8050
Fax: +818.637.8054

www.marksmen.com
License PI 23992

PRIVILEGED AND CONFIDENTIAL

July 13, 2011

Johanna Wilbert
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497

Re: SMART AND BALANCE PROJECT (MIAMI, FL)
Registrant/Company Info: Publix / Winn Dixie / Walmart
Provided address/phone: Miami, FL
Client Matter: QBLLP-ACTIVE.FID35301295
File Number: 63313

Dear Johanna:

Our office received your request on June 20, 2011, instructing us to visit several supermarkets in the Miami, Florida area to determine if they are marketing goods or services using the names SMART and/or BALANCE.

Products with the word "Smart" or "Balance" were found and purchased at all three stores.

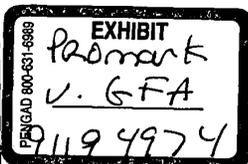
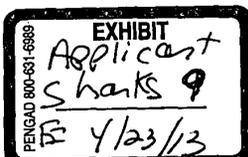
INVESTIGATION CONCLUDED PENDING ADVISEMENT.

Publix / Winn Dixie / Wal-mart - Miami, FL

We enlisted the services of our local associate, and she reported the following:

On Tuesday, June 28th, the first store visited by the investigator was the Wal-Mart Superstore located in Miami Gardens, FL. Upon arrival, the investigator first located a Smart Balance product to confirm that Wal-Mart carried this line of goods.

Thereafter, the investigator walked up and down all of the aisles as instructed, and then across to the other side of the store to the vitamin/nutrition section to review all products for sale, specifically look for any items with the word "Smart" or "Balance" on the



GFA043205

product.

This same procedure was repeated the following day at the Publix Supermarket located in Hialeah/Miami Lakes, and the Winn Dixie Supermarket located in California Club.

One item of each brand was obtained and purchased. The investigator noted that there were sometimes numerous varieties of the product.

You were sent via email an Excel spreadsheet identifying each of the products purchased at each of the stores. Copies of the receipts for the products purchased at each store were emailed to you.

Digital photographs were taken of each of the products purchased were also emailed to you.

Pending further advisement from you, we have concluded our investigation of the SMART AND BALANCE PROJECT (MIAMI, FL) . If you have further need of our services on this or any other matter, please contact us.

Best Regards,



Kate Schrader

Marksmen Contact: Kate Schrader

Email: kschrader@marksmen.com

Phone: 800-558-8838

plt

Opposition Nos. 91194974 (Parent) and 91196358
PROMARK BRANDS INC., & H.J. HEINZ COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.



PO BOX 527465
MIAMI, FL 33152-7465
Agency #: A9600112

June 30, 2011

Ms. Phoebe Taylor and Mr. John Shoenfelt
Marksmen, Inc.
PO Box 968
Chapel Hill, NC 27514

Re: **Smart Balance**
Client Ref.: 63313
Our Ref.: A1.10010

Dear Phoebe and John:

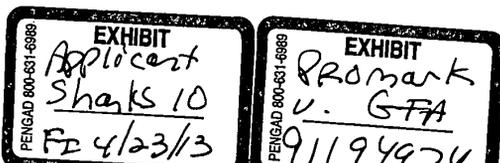
Thank you for the assignment. The following shall serve as our investigative report for work conducted regarding the above-referenced matter.

As directed, an Investigator traveled to stores only in Miami-Dade County. The first store visited was the Wal-Mart Superstore located in Miami Gardens, FL on Tuesday, June 28th with the Investigator departing at 6:30 PM. Upon arrival, the Investigator first located a Smart Balance product to confirm they carry this line of goods.

Thereafter the Investigator walked up and down all of the aisles as instructed and then across to the other side of the store to the vitamin/nutrition section to review all products for sale, specifically looking for any items with the word "Smart" or "Balance" within the product's name. One item of each brand was obtained and purchased; the Investigator noted that there were sometimes numerous varieties of the product.

This same procedure was repeated the following day on Wednesday, June 29th at the Publix Supermarket located in Hialeah/Miami Lakes (commencing at 4:00 PM) and the Winn Dixie Supermarket located in California Club (commencing at 6:45 PM). Attached as requested are the following:

Tel: 305-871-8090 • www.proedge-group.com • Fax: 305-871-8043



GFA043187



PO BOX 527465
MIAMI, FL 33152-7465
Agency #: A9600112

-
1. Excel spreadsheets identifying each of the products purchased at each of the stores;
 2. Copies of the receipts for the products purchased at each store; and
 3. Digital photographs of each of the products purchased.

Unless otherwise directed this now concludes our handling of this matter. We have secured the non-perishable products and the empty/cleaned containers of the perishable products as requested pending further instructions as to their disposal.

Also attached is our statement for services rendered to date. As always, if you have, any questions or comments please do not hesitate to contact our office. It is a pleasure working with you and we look forward to doing so again very soon. Thank you again for contacting ***PROEDGE GROUP*** for your investigative needs!

Respectfully submitted,
PROEDGE GROUP

Barbara S. Lee

Director

Attachments

Publix

marksmen

Country Club Plaza
18496 NW 67 Ave.
Hialeah, Fla. (305)822-4636
Store Manager: Mike Kori

SMARTWATER			
1 @ 4 FOR	5.00	1.25	F
You Saved	0.54		
KELL SMART START		4.29	F
BISQUICK HRT SMART		3.59	F
SMART BEAT MAYO		2.69	F
You Saved	0.50		
PLUMSMART LT JUICE		3.75	T F
PREG HRT SMT MSHRM		2.69	F
HP HOOD MILK		3.69	F
RONZONI PENNE RIGT		1.00	F
You Saved	0.49		
WW BISTRO SELECTIO		3.39	F
HORIZON MILK		3.29	F
GRBR SMNRISH OATML		2.89	F
GER W/DHA 2ND FDS			
1 @ 4 FOR	5.00	1.25	F
ORVILLE POPCORN		2.99	F
BALANCE CHC BRWN		0.99	F
BREY CARB SMART		4.29	T F
SMART BAL BLEND			
1 @ 2 FOR	5.00	2.50	F
You Saved	0.89		

Order Total	44.54	
Sales Tax	0.56	
Grand Total	45.10	
Credit	Payment	45.10
Change		0.00

Savings Summary

Special Price Savings	2.42

* Your Savings at Publix *	
* 2.42 *	

 PRESTO!
 Reference #: 070409-003
 Trace #: 0010018111
 Acct #: XXXXXXXXXXXX2011
 Purchase: American Express
 Amount: \$45.10
 Auth #: 562193

Avail. Credit Bal: 0.00

Your cashier was Lana G.

06/29/2011 17:34 S0262 R107 3901 C0420

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Publix Super Markets, Inc.

Publix Advertising Co. Inc. 11/11/11

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Walmart

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 (305) 622 - 6664

ST# 3311	OP# 00001670	TE# 06	TR# 01465
KLG CEREAL	003800066330	F	3.12 0
GB ORG CEREAL	001500012502	F	2.74 N
SB HEARTRGT	003377601950	F	2.98 0
SO CKN BROC	002580002930	F	3.18 0
IC BAR	007585606105	F	3.68 T
SF TROPICAL	007349123500	F	2.50 0
GB 2ND ORGNC	001500012709	F	1.18 N
SS LF1 MILK	004410016927	F	3.28 0
BREAD	004500011021	F	1.98 0
SPBTR BBAG	002700049021	F	2.98 N
ANGEL HAIR	007130005005	F	1.44 0
BALANCE BAR	075004900242	F	0.96 N
ASEPTIC MILK	074236520835	F	2.98 N
	SUBTOTAL		33.00
TAX 1	7.000 %		0.26
	TOTAL		33.26
AMEX	TEND		33.26

ACCOUNT # 2011
 APPROVAL # 582673
 REF # 118000194444

CHANGE DUE 0.00

ITEMS SOLD 13



Barbara J. Lee

New Pick Up Today. Order online,
 free same-day pick up at your Walmart.
 06/28/11 20:38:58

CUSTOMER COPY

Wahsman

03570 20629 20062
0983 6481 0313

Winn-Dixie

Getting better all the time

Questions or Comments
1-866-WINN-DIXIE (1-866-946-6349)
www.winn-dixie.com

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WINNDIXIE.COM

REWARD CARD SAVINGS 1.39

You Saved \$1.39

YOU HAVE SAVED A TOTAL OF 992.67
WITH YOUR CUSTOMER REWARD CARD

S-SMART 1% MILK	3.89 F
SO SPCY SZECHUAN	2.99 F
BRYERS CRBSMRT ALM	4.49 B
WONDER SMART WHITE	2.99 F
ORV SMRT MN KTTL	2.99 F
SUNSWEET PLUMSMART	4.49 F
WD LIQ EGG SUBS	2.59 F
LL SMART DOG	3.99 F
SMRT BAL NAT PNT	3.39 F
GERBER GRAD SIPS RC	3.89 F
BAL BAR CRML NUT	7.99 F
GLACEAU SMRT WATER	1.59 B
GRBR 2 BNSQ/HVAP	1.69 F
PREGO H/S RED PEPP	2.79 F
WARD CUSTOMER	420XXXX2242
GERBER GRAD SI (2.50)	1.39-F
*** TAX .42 TOT	48.79
American Express	48.79
XXXXXXXXXXXX2011	
AUTH #: 522736 SEQ #:	1046
CHANGE	.00

YOUR CASHIER TODAY IS, BRIDGET



DIRECTOR KEVIN WALLER
STORE # 0357
MIAMI, FL
PHONE # (305)653-2657
FTD FLORIST (800)852-9297

THANK YOU FOR SHOPPING WINN-DIXIE

TOTAL NUMBER OF ITEMS SOLD = 14
6/29/11 8:13 PM 0357 02 0443

For Free Milk that makes life 2% milk
1% percent from that makes life whole milk
More protein and calcium than 1% milk milk
No Artificial Sweeteners
Check for Free Milk centers in your area and no artificial sweeteners

Winn-Dixie
www.winn-dixie.com



PO Box 527465, Miami, FL 33152-7465
Agency #: A9600112
Federal Tax ID #: 65-0647745

6/30/2011

Invoice #: 17199

Mr. John Shoenfelt
Marksmen, Inc.

Re: Smart Balance
Client Ref.: 63313

File #: A1.10010

PROFESSIONAL SERVICES RENDERED

		Hrs/Qty	Rate/Price	Amount
6/20/2011	Receive and review documents obtained from	0.75	75.00	56.25
7/1/2011	Client; Telephone contacts with Client.			
	Travel to and from Winn Dixie, Walmart and Publix to purchase items.	8.5	75.00	637.50
7/1/2011	Report and photo preparation	3	75.00	225.00
	Winn Dixie		48.79	48.79
	Publix		45.10	45.10
	Wal-Mart		33.26	33.26
6/28/2011	Mileage Expense	72	0.75	54.00
6/29/2011				

TOTAL DUE \$1,099.90

Tel: 305-871-8090

www.proedgegroup.com

Fax: 305-871-8043

GFA043192



GFA043145

EXHIBIT
Applicant
Shants II
E 4/23/15
PENGAD 800-631-6999

EXHIBIT
Promark
v GFA
91194974
PENGAD 800-631-6999

Publix.

Because Publix is concerned about the environment and reducing waste, we encourage you to use reusable bags when you shop. And don't forget, we accept recyclable plastic and glass containers at Publix.



Publix.

Because Publix is concerned about the environment and reducing waste, we encourage you to use reusable bags when you shop. And don't forget, it's easy to recycle your old paper and plastic bags at Publix.

NEW

EASIER SNACKING • SHAPING • CLEAN UP

POP UP BOWL™

Orville
Redenbacher's

SMART POPI

94% FAT FREE

DIET POP UP BOWL™ (SEE NOTE) IS 100% WHOLE GRAIN CORN AND WE'VE MADE IT EASY!



UNWRAP



SEE IT POP!™

PULL OFF TOP FILM



ENJOY RIGHT FROM
THE BAG!

Diet Pop Up Bowl is whole grain and other plant foods and low in saturated fat and cholesterol.

© 2011 Weight Watchers. Points® = 2

GFA043147

Publix.

Publix is concerned about the environment and reducing waste. We encourage you to use reusable bags when you shop. Any extra bags we supply to support your shopping will be recycled.

Ingredients: The ingredients list is printed on the back of the product. For more information, visit www.gerber.com.



Gerber.

SmartNourishSM Organic

single grain oatmeal



Nutrition for healthy
GROWTH & SOLID
IMMUNE SUPPORT



GOOD SOURCE
OF VITAMIN D
WITH 100% WHOLE
GRAIN ORGANIC OATS

CHOCOLATE
NO ARTIFICIAL FLAVORS
NO SUGAR
NO PRESERVATIVES

blended with natural
Whole Grain
* Excellent
Source of Iron

Publix.

Because Publix is concerned about the environment and reducing waste, we encourage you to use reusable bags when you shop. And don't forget, it's easy to recycle your old paper and plastic bags at Publix.



WARNING: To avoid damage to this plastic bag, do not use this bag for anything other than its intended purpose. Do not use this bag for anything other than the following: 1. To store dry goods.

Publix.

Because Publix is concerned about the environment and reducing waste, we encourage you to use reusable bags when you shop. And don't forget, it's easy to recycle your old paper and plastic bags at Publix.

WARNING:
This product
contains
of the following

RONZONI

Smart Taste[®]

DELICIOUS ENRICHED WHITE PASTA

with Calcium, Vitamin D and Fiber

**PENNE
RIGATE**

**EXCELLENT
Source of**

- ✓ Calcium
- ✓ Vitamin D
- ✓ Fiber



SERVING SUGGESTION

NET WT. 14.5 OZ (411 g)

Publix.

SUNSWEEET

light
Plum
Smart

FOR YOUR DIGESTIVE HEALTH

- 1 Less Sugar and Sugar*
- 1 Helps Regulate Digestion

1.42L

Publix.

The Publix bottle is designed using the environment and reducing waste, we encourage you to use reuse. Keep when you shop. And don't forget! It's easy to recycle your old. And plastic bags at Publix.



smart water®
GLACÉAU

Publix

American Heart Association
Heart-Healthy Choices
Heart-Healthy Recipes
Heart-Healthy Living

OFFICIAL
SOFT TOP
PANCAKE
MIX

Heart Smart Bisquick

Pancake and Baking Mix

LOW IN
SATURATED FAT
CHOLESTEROL AND
SUGAR
THE RISK OF HEART DISEASE
REDUCED HEART SMART
LOW SODIUM
NATURALLY
CHOLESTEROL FREE

- ✓ Low Fat
- ✓ 0g Trans Fat
- ✓ Naturally Cholesterol Free
- ✓ Excellent Source of Calcium



NET WT 2 LB 8 OZ



NET WT 2 LB 8 OZ (1.13kg)

Publix

Good Source of **FIBER** & Made with **WHOLE GRAIN**

Calories 190	Total Fat 0.5g	Total Carb 28g	Sugars 14g	Fiber 3g	Protein 5g
	1*	12*		11*	10*

NEW LOOK Same GREAT Taste

Kellogg's

**SMART
START**

Original Antioxidants

Lightly sweetened, toasted multi-grain flakes and crunchy oat clusters

STRONG HEART

Antioxidant Vitamins A, C & E including Beta Carotene



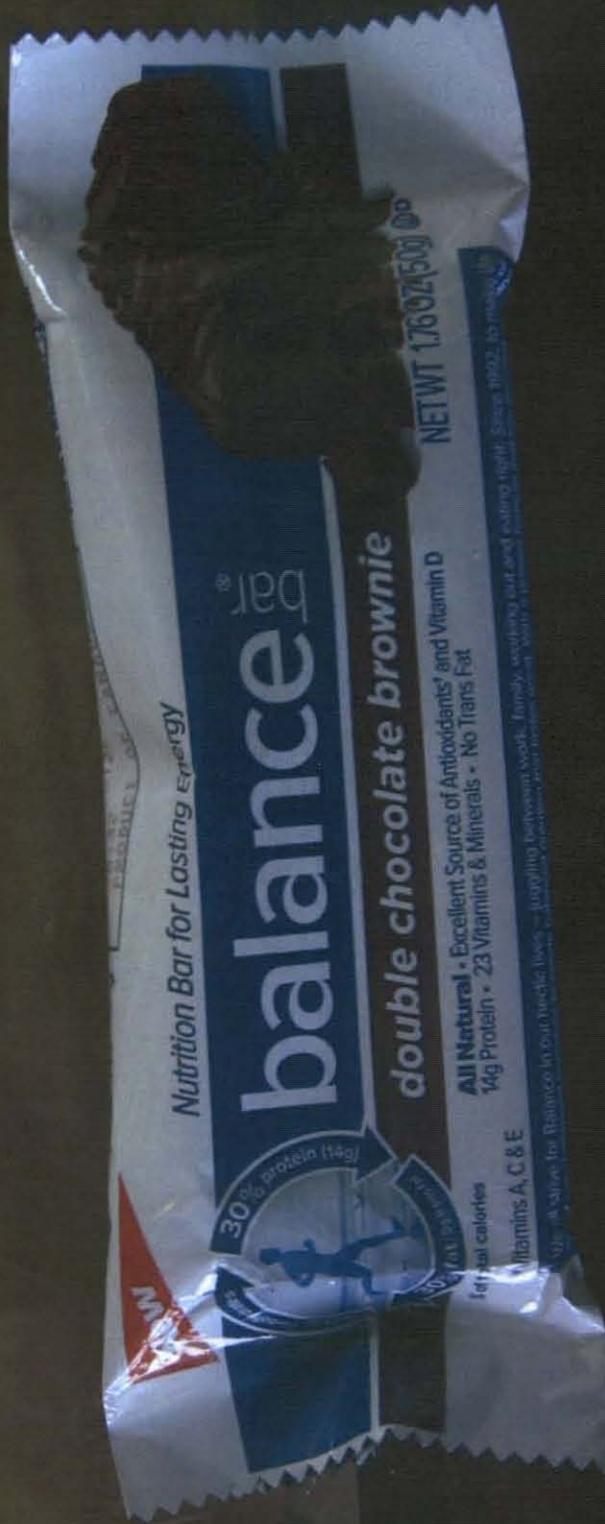
SEE BACK OF BOX FOR
NUTRITIONAL INFORMATION
AND ALLERGEN INFORMATION

CEREAL

NET WT 17.5 OZ (1 LB 1.5 OZ) (496g)

Publix.

Because Publix is concerned about the environment and reducing waste, we encourage you to use reusable bags when you shop. And don't forget: It's easy to recycle your old paper and plastic bags at Publix.



Publix

Publix Super Market
100% Natural
100% Natural
100% Natural



Publix



Only 10 Calories
PER TABLESPOON

**Smart
Beat**

CHOLESTEROL
FREE

NONFAT MAYONNAISE DRESSING

32 FL OZ (1 QT) 946 mL

0 mg
trans fat

Publix

For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

CarbSmart

ALMOND BAR



For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

BREYERS®

CarbSmart™

SWEETENED WITH
Splenda
& OTHER SWEETENERS



5g
NET CARBS
PER SERVING

For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

CarbSmart



Publix

Hood
Simply Smart

Chocolate Fat Free Milk
90% Less Fat than Chocolate 2% Milk

Hood
Simply Smart

Simply Delicious! The Taste
of Chocolate Reduced Fat
Milk Without the Fat.

Hood found a way to remove some of the liquid that makes fat free milk look and taste watery. This natural technique is called ultra filtration and the result is simply delicious!

Try it Now!

Simply Smart® Fat Free Milk
and Simply Smart® 1% Lowfat Milk





PENGAD 800-631-6889

EXHIBIT
Applicant
Shank 12
E 4/23/13

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v. GFA
91194974

GFA043161

Walmart



Save money. Live better.

Nutrition Facts

Serving Size 2 Slices (52g)
Servings Per Container 11

Amount Per Serving	2 Slices 1 Slice
Calories	100 50
Calories from Fat	10 5
% Daily Value* 2 Slices 1 Slice	
Total Fat 1g, 0.5g	2% 1%
Saturated Fat 0g, 0g	0% 0%
Trans Fat 0g, 0g	
Polyunsaturated Fat 0.5g, 0g	
Monounsaturated Fat 0g, 0g	
Cholesterol 0mg, 0mg	0% 0%
Sodium 200mg, 100mg	8% 4%
Total Carbohydrate 22g, 11g	7% 4%
Dietary Fiber 5g, 2g	20% 8%
Sugars 4g, 2g	
Protein 5g, 3g	
Vitamin A	0% 0%
Vitamin C	0% 0%
Calcium	30% 15%
Iron	15% 8%
Vitamin D	15% 8%
Vitamin E	15% 8%
Thiamine	10% 4%
Riboflavin	10% 8%
Niacin	10% 4%
Vitamin B6	10% 6%
Folic Acid	15% 6%
Vitamin B12	10% 6%
Zinc	10% 4%

*Percent Daily Values are based on a diet of 2,000 calories. Your daily values may be higher or lower depending on your calorie needs.
Calories: 2,000 2,500

Total Fat	Less than 65g	80g
Sat Fat	Less than 20g	25g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4



Soft. Delicious. Nutritious.® An American Classic.

Wonder® has been a delicious part of American meals for generations. Soft texture. Unbeatable taste. Wonder offers breads to satisfy every generation in your family. And our heritage of baking wholesome and nutritious breads continues today.

Wonder Smartwhite® combines the delicious taste of fresh baked white bread with the nutritional goodness of 100% whole wheat bread. It's the perfect blend of taste, softness and nutrition.



FIBER
5 grams per serving



CALCIUM
of 8 oz. of MILK per serving



33% LESS SODIUM



NO HIGH! FRUCTOSE CORN SYRUP



ESSENTIAL NUTRITION
Good source of:
Vitamin D • Vitamin E • Thiamine
Niacin • Iron • Vitamin B6
Vitamin B12 • Zinc • Folic Acid



50 CALORIES per slice

Wonder
Smartwhite

7/18/2022A
Based on USDA Nutrition Facts, 65g serving of white bread. Wonder® Smartwhite contains 200mg of Sodium per 52g (2 slices) (USDA Nutrition Database for Standard Reference Release 22).

INGREDIENTS: WATER, WHEAT FLOUR, WHEAT GLUTEN, COTTAGE CHEESE, SUGAR, YEAST, SOY FIBER, CONTAINS 2% OR LESS OF: CALCIUM CARBONATE, NONFAT MILK, SOYBEAN OIL, SALT, BARLEY MALT, VINEGAR, MONO- AND DIGLYCERIDES, CELLULOSE GUM, MALTODEXTRIN, CALCIUM PROPIONATE (TO RETAIN FRESHNESS), SODIUM STEAROYL LACTYLATE, ETHOXYLATED MONO- AND DIGLYCERIDES, RUM GUM, XANTHAN GUM, ENZYMES, YEAST EXTRACT, NATURAL FLAVOR, CALCIUM SULFATE, FERROUS SULFATE (IRON), VITAMIN E ACETATE, B VITAMINS (NIACIN, THIAMINE MONONITRATE (B1), RIBOFLAVIN (B2), PYRIDOXINE HYDROCHLORIDE (B6), FOLIC ACID, VITAMIN B12), SOY LECITHIN, CALCIUM OXIDE, MONOCALCIUM PHOSPHATE, AZODIACETAMIDE, AZODIACETAMIDE, STEVIA EXTRACT, NATURAL SWEETENER, VITAMIN D3, ZINC OXIDE, SOY FLOUR, WHEAT CONTAINS WHEAT, MILK, WHEAT, SOY.

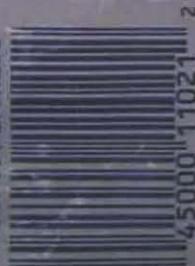
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Hungry for more?
Create a sandwich sensation with the Sandwich Wonder-izer™ at www.wonderbread.com.

While you're there you'll find nutrition information, great recipes and more!

Proof of Purchase



0 45000 11021 2

Try all of our Wonder brand products:

- Wonder Classic White Bread – perfect for classic sandwiches.
- Wonder Smartwheat™ Bread – 100% whole wheat with calcium, vitamins and minerals.
- Wonder Hamburger and Hot Dog Buns – the perfect grilling partners.

Walmart

Save money. Live better.



Walmart



Save money. Live better.



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Save money. Live better.

KOZY SHACK
SmartGels
 naturally flavored gels
 no artificial colors or flavors **SUGAR FREE**

Tropical
Flavored



NET WT 21 OZ (594g)

- Gluten free
- No preservatives
- 10 calories or less

KOZY SHACK
SmartGels
 naturally flavored gels
 no artificial colors or flavors **SUGAR FREE**

Tropical
Flavored



NET WT 21 OZ (594g)

- Gluten free
- No preservatives
- 10 calories or less



A great snack for at home or on the GO!

Product Benefit Comparison	SmartGels [®] Leading Brand Gelatin Snacks
Gluten-free	<input checked="" type="checkbox"/>
No Preservatives	<input checked="" type="checkbox"/>
No Artificial Colors	<input checked="" type="checkbox"/>
No Artificial Flavors	<input checked="" type="checkbox"/>
No Animal By-Products	<input checked="" type="checkbox"/>

Nutrition Facts

Amount/erving	% DV	Amount/erving	% DV
Total Fat 0g	0%	Total Carb. 1g	0%
Sat. Fat 0g	0%	Dietary Fiber 1g	4%
Trans Fat 0g	0%	Sugars 0g	0%
Cholest. 0mg	0%	Protein 0g	0%
Sodium 15mg	1%		
*Percent Daily Values (DV) are based on a diet consisting of 100% SmartGels.			
Vitamin A 0% • Vitamin C 100% • Calcium 2% • Iron 0%			

SmartGels is a registered trademark of Kozy Shack, Inc. ©2011 Kozy Shack, Inc. www.kozyshack.com
 Kozy Shack, Inc. 210 8th St. N. Minneapolis, MN 55401
 PLEASE RECYCLE. CONTAINS 11 BAGS OF ASPARTAME. ASPARTAME'S BENEFICIAL EFFECTS ON BLOOD SUGAR AND CHOLESTEROL LEVELS ARE SUPPORTED BY SCIENTIFIC RESEARCH.
 REFRIGERATE. DO NOT FREEZE.
 03 AUG 11

PI 1200511086
 PROOF OF PURCHASE SEAL

 0 73491 12350 0

Walmart



Save money. Live better.

EXP-14 JUL7-27-11 05:19 36-5631

Hood
Simply
Smart



1% Lowfat Milk
with the Taste of Whole Milk

Hood
Simply
Smart

1% Lowfat Milk
with the Taste of Whole Milk

- ✓ No Artificial Growth Hormones*
*As Found in Our Cows
- ✓ 25% More Protein
- ✓ 20% More Calcium
Than Whole Milk

GRADE A

1% LOWFAT MILK 16.6 FL OZ (473 mL) 100% PASTEURIZED CREAMY WHOLE MILK
VITAMINS A & D - ULTRA-PASTEURIZED

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Save money. Live better.



Walmart 
Save money. Live better.



Walmart



Save money. Live better.

Good Source of **FIBER** & Made with **WHOLE GRAIN**

Calories 190
Sugars 14g
Total Fat 12g
Sodium 110mg
Total Fiber 10g

NEW LOOK Same GREAT Taste

Kellogg's

SMART START

Original Antioxidants

Lightly sweetened, toasted multi-grain flakes and crunchy oat clusters

STRONG HEART

Antioxidant Vitamins A, C, & E, including Beta Carotene



SEE BACK
FOR
DIRECTIONS
ON HOW TO
SERVE

CEREAL

NET WT 17.5 OZ (1 LB 1.5 OZ) (496g)

GFA043169

Walmart



Save money. Live better.

For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

Carb Smart

ICE CREAM BAR



For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

BREYERS

Carb Smart

SWEETENED WITH
Splenda
& OTHER SWEETENERS



5g*

For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

Carb Smart

ICE CREAM BAR

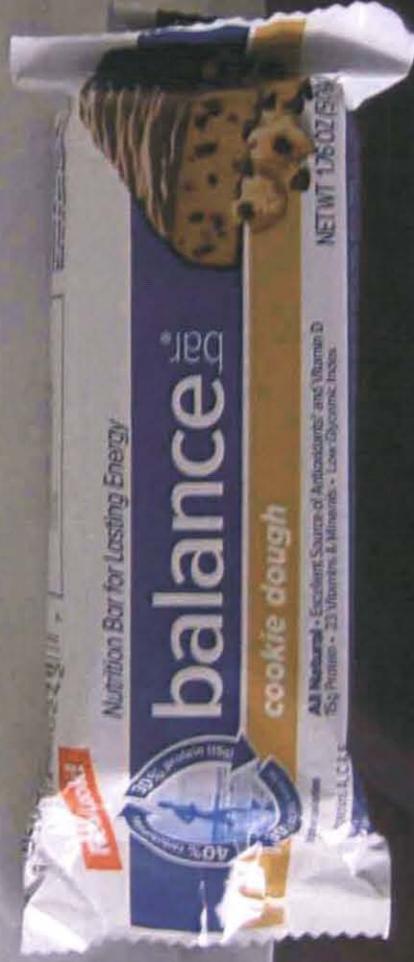


75836 06105 3



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Walmart 
Save money. Live better.

New

EASIER SNACKING • SHARING • CLEAN UP
POP UP BOWL™



Orville
Redenbacher's

SMART POP!
KUSNET'S
PURE CORN

94% FAT FREE

100%
WHOLE
GRAIN

BUTTER
NATURAL & ARTIFICIAL FLAVORS

6
BAGS

6-2.7 OZ (76.9g) BAGS
NET WT 16.2 OZ (457.8g)

MICROWAVE

GFA043172

Walmart

Save money. Live better.



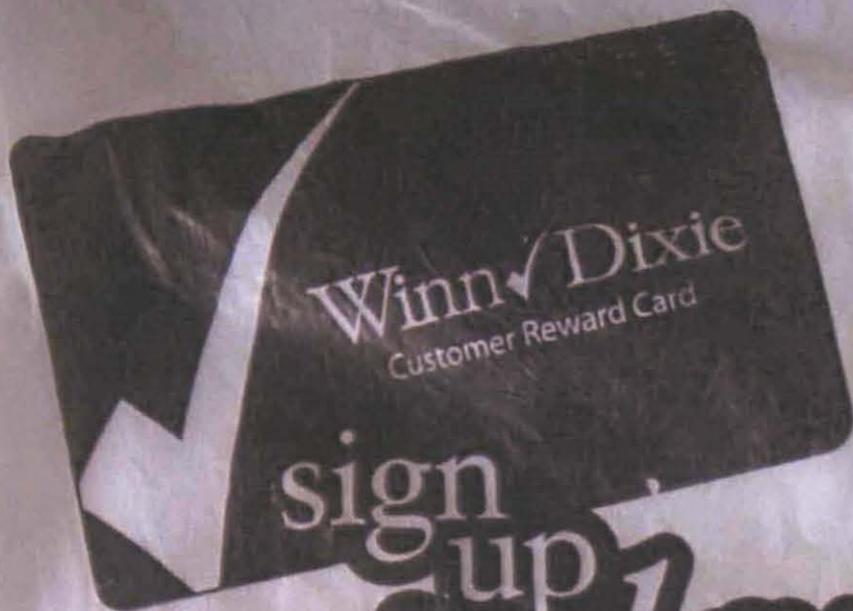
GFA043173



PENGAD 800-831-8888 EXHIBIT
Applicant
Sharks 13
B4/23/13

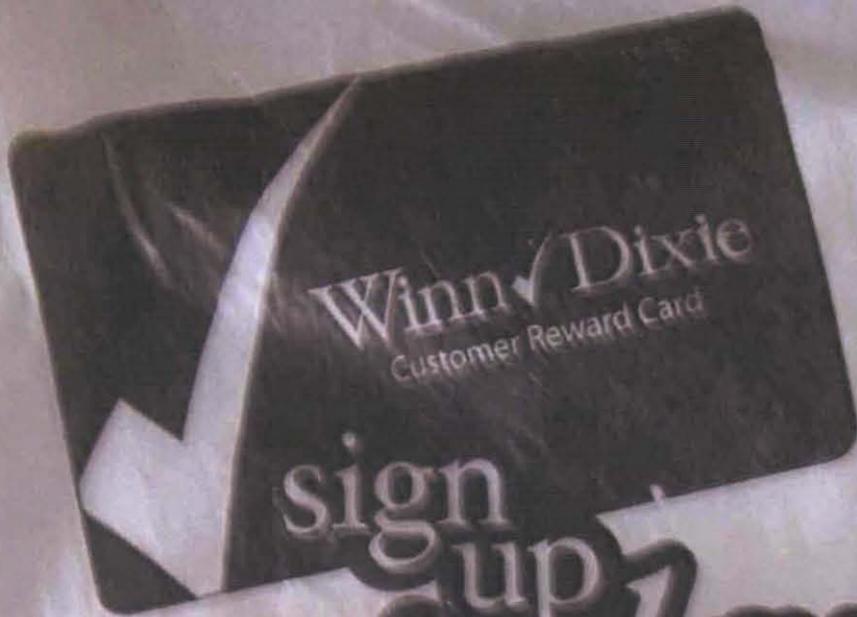
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Promark
v. GFA
91194974

GFA043174



sign
up
today!





sign up today!

WeightWatchers®

Smart Ones®

Spicy Szechuan Style Vegetables & Chicken *Classic Favorites*

Great Taste
8g of WHOLE GRAIN!

NEW! PommyPlus®

Weight Watchers Program With Increased Daily Target
See Back for details

240 Calories | 5g Fat

NET WT. 9.0 OZ (255 g)

KEEP FROZEN
COOK THOROUGHLY - SEE COOKING INSTRUCTIONS



Winn-Dixie
Customer Reward Card

sign
up
today!

For Use as
Part of a Low
Carb Diet!

See nutrition
information
for calorie
content.

BREYERS

Carb Smart

SWEETENED WITH
Splenda
AND OTHER SWEETENERS



5g
NET CARBS

ALMOND BAR

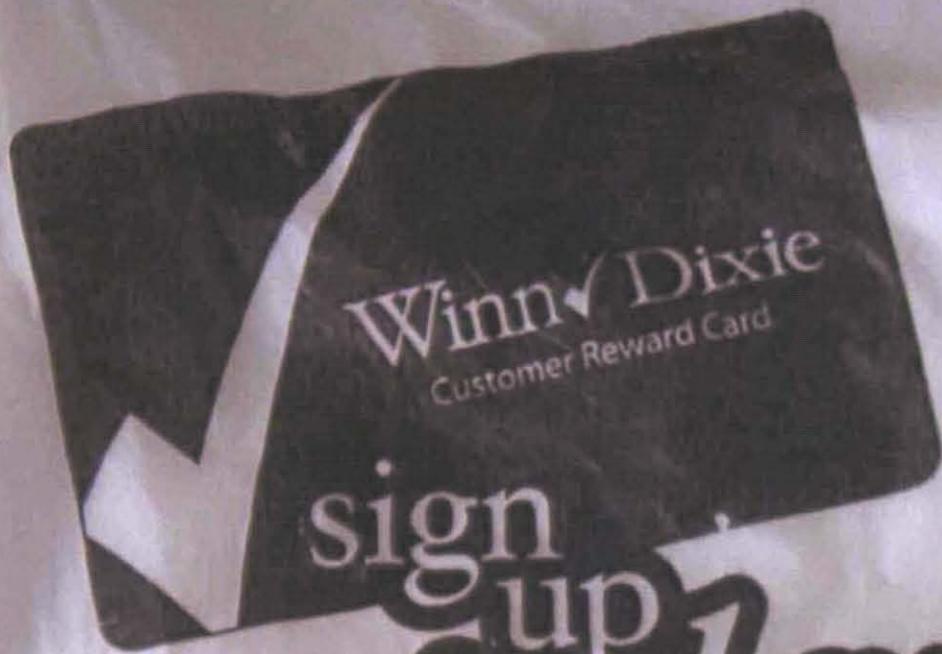


6 BARS

Vanilla Ice Cream with Candies
and Coating in Almond

30 FL OZ (849 mL)





sign up today!





Winn-Dixie
Customer Reward Card
sign up now!



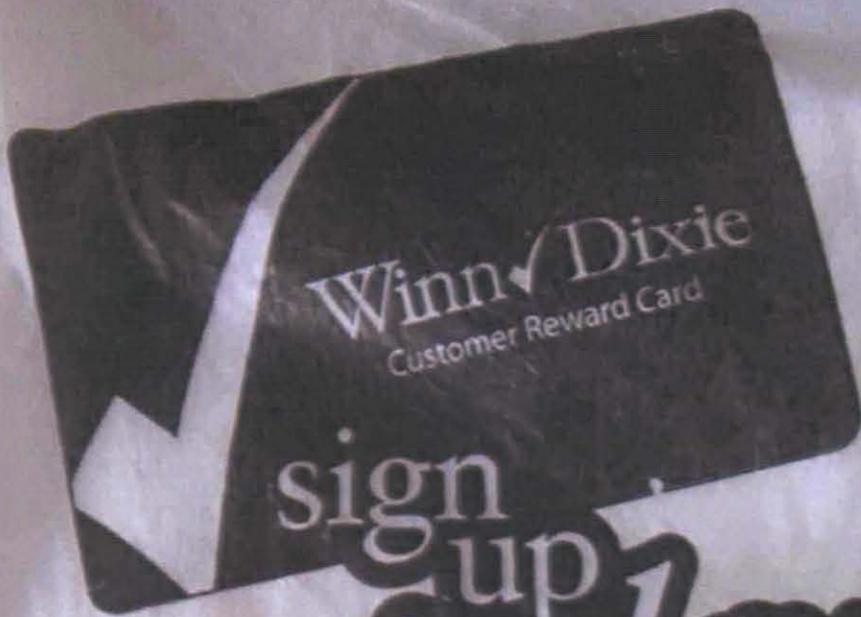
100% Natural
Prego
ITALIAN SAUCE
Heart Smart
Roasted Red Pepper
& Garlic
NET WT. 1 LB. 8 OZ. (24 OZ.) (680g)

American Heart Association
The American Heart Association and its products are not intended to be used as a substitute for healthy living.
While some factors associated with diet may reduce the risk of heart disease, they do not eliminate the risk of heart disease.



sign up
today!





sign up today!



New Look!

Nutrition Bar with Three Indulgent Layers

balance bar

GOLD

caramel nut blast



- All Natural
- High Protein 14g
- Excellent Source of Antioxidants & Vitamin D
- 23 Vitamins & Minerals
- Low Glycemic Index

6 PACK

Winn-Dixie
Customer Reward Card

sign up
today!

100 CALORIE

Orville
Redenbacher's
SMART POP!
GOURMET POPPING CORN
94% FAT FREE

MINI **4** BAGS

KETTLE KORN
SLIGHTLY SWEET & SLIGHTLY SALTY

By TRAVIS FAT FREE POPCORN

MICROWAVE
4-1/2 OZ (128g) BAGS
NET WT 4.9 OZ (140g)

Winn-Dixie
Customer Reward Card

sign up
today!

