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

Proceeding	91212477
Party	Defendant GFA Brands, Inc.
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Date	10/20/2014
Attachments	Rodermond, Chris Affidavit.pdf(1898377 bytes) Exhibit A.pdf(561077 bytes) Exhibit B.pdf(843238 bytes) Exhibit C.pdf(271554 bytes) Exhibit D.pdf(1042506 bytes) Exhibit E.pdf(353597 bytes)

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

In the Matter of Application Serial No. 85/751,520: EARTH BALANCE
Published for Opposition March 19, 2013

BALANCE BAR COMPANY

Opposer

v.

Opposition No. 91212477

GFA BRANDS, INC.

Applicant.

AFFIDAVIT OF CHRIS RODERMOND

I, Chris Rodermond, being duly sworn, declare as follows:

1. I am over the age of 18 and currently reside in Carrboro, North Carolina. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I am a licensed private investigator in the State of North Carolina (#4033-PIA).
3. I have worked as an investigator for Marksmen, Inc. for approximately two and a half years, from June 2012 to today.
4. My areas of expertise include trademark and patent investigations. I have conducted investigations domestically and internationally.
5. In spring 2014, Marksmen asked me to visit several designated retail stores in the Raleigh, North Carolina area to locate and purchase consumable items that contained some form of the term "Balance" on the packaging. Before investigating a store, I first determined whether the store carried Balance Bar products. If so, after locating the Balance Bar product, I conducted

the further investigation by searching the grocery and supplement/pharmacy section of the store for any packaged food item or nutritional supplement that contained the term “balance” on the product label.

6. On May 22, 2014, at approximately 12 p.m. (EDT), I visited the Lowes Foods Store located at 8100 Brier Creek Pkwy., Raleigh, NC 27617. I attempted to locate and purchase all products bearing some form of the term “Balance.”

7. During this visit to Lowes Foods Store, I located and purchased nine products bearing some form of the term “balance.” Products I located and purchased during this visit to Lowes Foods Store include: Old Orchard Healthy Balance (juice), Ensure Complete Balanced Nutrition (nutrition shake), B-Complex 50 Balanced B-Complex (dietary supplement), and B-Complete Bio-Balanced Systems (dietary supplement).

8. During this visit to Lowes Foods Store, I also located Balance Bar nutrition bars and Earth Balance Coconut & Peanut Spread.

9. Attached as Exhibit A is a document bearing production numbers GFA_EB002210, GFA_EB002212, GFA_EB002213, GFA_EB002216, GFA_EB002218, and GFA_EB002219. This document consists of true and correct copies of photographs of products I purchased from Lowes Foods Store on May 22, 2014. I took these photographs at Marksmen’s office after I concluded my investigation.

10. On May 22, 2014 at approximately 1:30 p.m. (EDT), I visited the Harris Teeter store located at 9810 Leesville Road, Raleigh, NC 27613. I attempted to locate and purchase all products bearing some form of the term “Balance.”

11. During this visit to Harris Teeter, I located and purchased 12 products bearing some form of the term “balance.” Products I located and purchased during this visit to Harris

Teeter include: Old Orchard Healthy Balance (juice), Mission Carb Balance (tortillas), Ensure Complete Balanced Nutrition (nutrition shake), and Balanced B-100 Complex (dietary supplement).

12. During this visit to Harris Teeter, I also located Balance Bar nutrition bars and the following Earth Balance and Smart Balance Products: Smart Balance Mayonnaise, Earth Balance Coconut & Peanut Spread, Smart Balance Natural Chunky Peanut Butter, Earth Balance Butter, and Smart Balance Spread.

13. Attached as Exhibit B is a document bearing production numbers GFA_EB002194–96, GFA_EB002198, GFA_EB002200, and GFA_EB002202–06. This document consists of true and correct copies of photographs of products I purchased from Kramer's on May 22, 2014. I took these photographs at Marksmen's office after I concluded my investigation.

14. On May 22, 2014 at approximately 3 p.m. (EDT), I visited the Rite Aid Pharmacy located at 13300 Strickland Road, Raleigh, NC 27613. I attempted to locate and purchase all products bearing some form of the term "Balance."

15. During this visit to Right Aid Pharmacy, I located and purchased seven products bearing some form of the term "balance." Products I located and purchased during this visit to Rite Aid Pharmacy include: Balanced B Complex (dietary supplement) and Ensure Complete Balanced Nutrition (nutrition shake).

16. During this visit to Rite Aid, I also located Balance Bar nutrition bars.

17. Attached as Exhibit C is a document bearing production numbers GFA_EB002226, GFA_EB002228, and GFA_EB002229. This document consists of true and

correct copies of photographs of products I purchased from Rite Aid Pharmacy on May 22, 2014.

I took these photographs at Marksmen's office after I concluded my investigation.

18. On May 27, 2014 at approximately 2 p.m. (EDT), I visited the Target store located at 4191 The Circle at North Hills Street, Raleigh, NC 27609. I attempted to locate and purchase all products bearing some form of the term "Balance."

19. During this visit to Target, I located and purchased 24 products bearing some form of the term "balance." Products I located and purchased during this visit to Target include: Simply Balanced Nut & Seed Bar, Simply Balanced Peach Slices, Simply Balanced Whole Grain Popcorn, Simply Balanced Vanilla Bean Granola, Simply Balanced Fruit Strips, Fiber One Balanced Nutrition for a Healthy Lifestyle Meal Bar, Boost Balanced Nutrition for People with Diabetes Nutritional Drink, Balanced B-100 Complex (dietary supplement), Simply Balanced Organic White Grape Juice, Simply Balanced Essence Water, and Ensure Complete Balanced Nutrition (nutrition shake).

20. During this visit to Target, I also located Balance Bar nutrition bars.

21. Attached as Exhibit D is a document bearing production numbers GFA_EB002247, GFA_EB002250, GFA_EB002252, GFA_EB002254, GFA_EB002257, GFA_EB002261, GFA_EB002267, GFA_EB002269, GFA_EB002271, GFA_EB002272, GFA_EB002274, and GFA_EB002276. This document consists of true and correct copies of photographs of products I purchased from Target on May 27, 2014. I took these photographs at Marksmen's office after I concluded my investigation.

22. On May 27, 2014 at approximately 4 p.m. (EDT), I visited the Food Lion store located at 5426 Six Forks Road, Raleigh, NC 27609. I attempted to locate and purchase all products bearing some form of the term "Balance."

23. During this visit to Food Lion, I located and purchased ten products bearing some form of the term “balance.” Products I located and purchased during this visit to Food Lion include: Healthy Accents Balanced Nutritional Supplement, Ensure Complete Balanced Nutrition (nutrition shake), and Old Orchard Healthy Balance (juice).

24. During this visit to Food Lion, I also located Balance Bar nutrition bars.

25. Attached as Exhibit E is a document bearing production numbers GFA_EB002180, GFA_EB002181, GFA_EB002182, and GFA_EB002187. This document consists of true and correct copies of photographs of products I purchased from Food Lion on May 27, 2014. I sent these photographs (including photographs of the three receipts) to Marksmen after I concluded my investigation.

AFFIRMATION

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: October 17, 2014


Chris Rodermond

STATE OF NC, COUNTY OF Orange, ss:




Notary Public Genac Wickler

My commission expires 04/29/2018

Signature of Officer Administering Oath _____ Title _____

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2014, I served upon counsel of record the foregoing
by causing the same to be delivered by U.S. mail and email to:

R. Glenn Schroeder
Schroeder Law PC
110 Cooper Street #605
Babylon, NY 11702
gschroeder@schroederlawpc.com

Dated this 20th day of October, 2014.

/s/ Johanna M. Wilbert
Johanna M. Wilbert
Quarles & Brady LLP
411 E. Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497
Phone: (414) 277-5000
Facsimile: (414) 978-8942
johanna.wilbert@quarles.com

Exhibit A







Nutrition Facts
Serving Size 1 bottle
Amount Per Serving
Calories 350

Total Fat	11g	22%
Saturated Fat	6g	12%
Trans Fat	0g	0%
Polyunsaturated Fat	4g	8%
Monounsaturated Fat	1g	2%
Cholesterol	10mg	20%
Vitamin A	25%	
Iron	25%	
Vitamin K	25%	
Niacin	25%	
Vitamin B ₁₂	25%	
Phosphorus	30%	
Zinc	25%	
Manganese	60%	
Chloride	8%	

*Percent Daily Values are based on a diet of other people's secrets.

INGREDIENTS: WATER, CANNED PEANUT BUTTER, CANOLA OIL, SIFTED POWDERED SUGAR, SALT, POTASSIUM FLAVOR, SODIUM CITRATE, CALCIUM CARBOXYMETHYLCELLULOSE, MANGANESE ACACIATE, SUCRALOSE, SUCRALOSE & PALMITATE, TRIMELLIC ANHYDRIDE, POTASSIUM PHOSPHATE, SORBIC ACID, POTASSIUM CHLORIDE, POTASSIUM CITRATE, POTASSIUM SORBATE, POTASSIUM SORBATE & POTASSIUM CHLORIDE.

Calories 350 protein 13g Vitamins & Minerals 24

Calories 350 protein 13g Vitamins & Minerals 24







Exhibit B











SPREAD • FRY • SAUTÉ • BAKE

Great Buttery Taste



earth balance®

natural buttery spread

U
PARVE

NEW
SHAPE
Still
13 oz

Organic
WHIPPED

78% Natural
Vegetable Oils

NET WT 13 OZ (368g)











Exhibit C







Exhibit D



Gluten Free!

Nestlé Health Science

BOOST
Glucose Control[®]
Nutritional Drink

- Balanced Nutrition for People with Diabetes
- 16g of High-Quality Protein to Help Maintain Muscle
- 25 Essential Vitamins & Minerals
- 1 Carbohydrate Choice

Very Vanilla Natural and Artificial Flavor

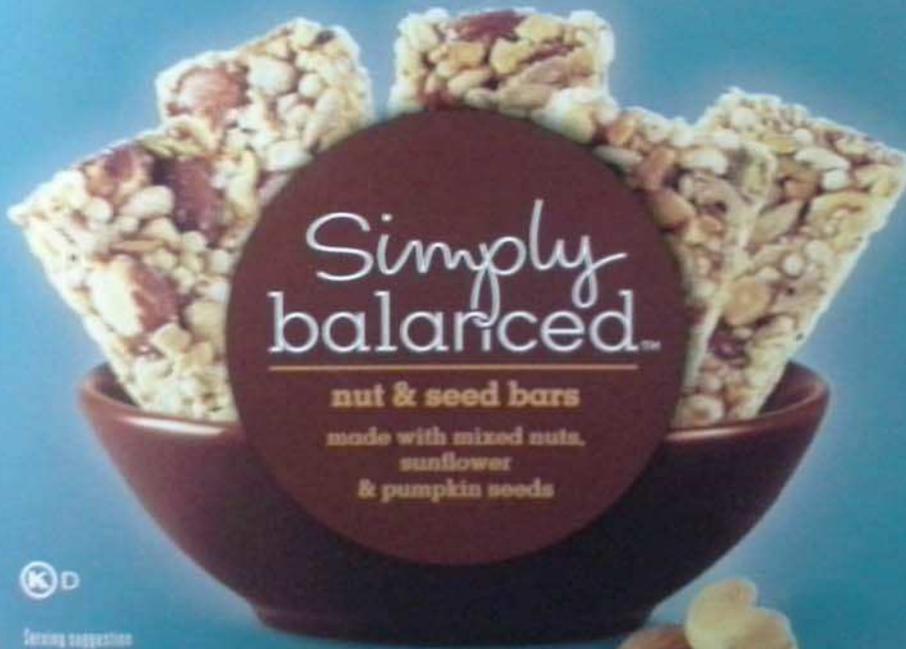
6-8 FL OZ (237 mL) BOTTLES
NET 1.5 QT (1.42 L)

UD



5 count

push to
open



Simply
balanced™

nut & seed bars
made with mixed nuts,
sunflower
& pumpkin seeds



Serving suggestion

NET WT 6.2 OZ (175g) / 5—1.2 OZ (35g) BARS







30g
whole grains
per serving

made with a blend
of ancient grains

good source of fiber

Clearance
231 13 0708

New \$9.70

Simply
balanced™

vanilla bean
granola

made with natural
ingredients

Serving suggestion

NET WT 15 OZ (425g)









made with
natural
ingredients

10 count

Simply
balarced™

fruit strips
wild berry
naturally flavored



Serving suggestion

10 - 0.5 OZ (14g) STRIPS / NET WT 5 OZ (140g)

FIBER One™

PER BAR

190 CALORIES	3g SAT FAT 10% DV	180mg SODIUM 7% DV	6g SUGARS	9g FIBER 30% DV
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enlarged to show texture

NEW!

mealbar

balanced nutrition for a healthy lifestyle™

10g
PROTEIN

9g
FIBER
9g OF TOTAL FAT
PER BAR

60%
LESS SUGAR
THAN A SPECIAL K
MEAL BAR

CHOCOLATE
FLAVORED CHIPS

Chocolate Peanut Butter
NATURALLY FLAVORED

5 - 1.59 OZ (45g) BARS NET WT 7.95 OZ (225g)



New!

40-30-30 Nutrition Energy Bar

Balance^{bar}

dark

dark chocolate crunch



100% Rainforest Alliance Certified™ Cocoa[†]
Gluten Free • 13g Protein • 4g Fiber • Kosher
Excellent Source of Antioxidants (Vits. A, C & E) and Vitamin D

6
bars

6 BARS - 1.58 OZ (45g)
NET WT 9.48 OZ (270g) ©

dark
chocolate
crunch

Exhibit E



compare to Ensure®*
strawberry
NATURALLY & ARTIFICIALLY FLAVORED

healthy accents®

nutritional drink plus^{UD}

balanced nutritional supplement

24 essential vitamins & minerals



6
cans

6-8 FL OZ CANS (1.5QT) • 6-237mL CANS (1.42L)



