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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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| Submission | Defendant's Notice of Reliance |
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| Signature | /Johanna M. Wilbert/ |
| Date | 10/20/2014 |
| Attachments | GFA's 8th Notice of Reliance (Testimony from Another Proceeding).pdf(10502 bytes) Ex H-1 Jul 15 2014 Hooper trial test and exs__Part1.pdf(4179809 bytes) Ex H-1 Jul 15 2014 Hooper trial test and exs__Part2.pdf(4177856 bytes) Ex H-1 Jul 15 2014 Hooper trial test and exs__Part3.pdf(2537818 bytes) Ex H-2 Jul 23 2014 Kraft trial test and exs_.pdf(3072853 bytes) |

**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,

Opposition No. 91212477

v.

GFA BRANDS, INC.,

Applicant.

APPLICANT'S EIGHTH NOTICE OF RELIANCE

Pursuant to Rule 2.122(f) of the Trademark Rules of Practice, Section 704.13 of the Trademark Trial and Appeal Board Manual of Procedure, the Stipulation filed on August 6, 2014, and granted on August 14, 2014, Applicant, GFA Brands, Inc., hereby submits, makes of record in connection with this opposition proceeding, and notifies Opposer, Balance Bar Company, of Applicant's reliance upon testimony from another proceeding captioned Balance Bar Company v. GFA Brands, Inc., Nos. 91196954 and 91197748. Specifically, Applicant intends to rely on the trial testimony examination of William Hooper, taken July 15, 2014, and all exhibits annexed thereto, and the trial testimony examination of Timothy Kraft, taken July 23, 2014, and all exhibits annexed thereto.

True and correct copies of the July 15, 2014 trial testimony transcript of William Hooper and all exhibits annexed thereto are attached hereto as Exhibit H-1, and true and correct copies of the July 23, 2014 trial testimony transcript of Timothy Kraft and all exhibits annexed thereto is attached hereto as Exhibit H-2.

Dated this 20th day of October, 2014.

/s/ Johanna M. Wilbert

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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
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Dated this 20th day of October, 2014.

/s/ Johanna M. Wilbert

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EXHIBIT H-1

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

In the Matter of Application Serial Nos. 77/964206 and
77/864268: SMART BALANCE
Published in the Official Gazette on April 20, 2010,
respectively

BALANCE BAR COMPANY,

Opposer,

v.

Opposition No. 91196954

Opposition No. 91197748

GFA BRANDS, INC.,

Applicant.

DEPOSITION OF
WILLIAM HOOPER

Taken on Behalf of the Applicant

DATE TAKEN: July 15, 2014

TIME: 10:56 a.m. - 12:45 p.m.

PLACE: 345 East Forsyth Street
Jacksonville, Florida 32202

Examination of the witness taken before:

Samantha Cordova, FPR, Notary Public
Hedquist & Associates Reporters, Inc.
345 East Forsyth Street
Jacksonville, Florida 32202

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1 EXCERPTS OF THIS TRANSCRIPT HAVE BEEN DECLARED
2 CONFIDENTIAL AND ARE SEALED UNDER SEPARATE COVER

3 I N D E X

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1 WILLIAM HOOPER,
2 acknowledged having been duly sworn to tell the truth
3 and testified upon his oath as follows:

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MS. WILBERT:

7 Q Could you please state your full name for the
8 record?

9 A William E. Hooper, H-o-o-p-e-r.

10 Q Are you currently employed?

11 A Yes, I am.

12 Q Who are you employed by?

13 A Boulder Brands.

14 Q What is the connection, if any, between Boulder
15 Brands and the applicant in this dispute GFA Brands?

16 A Boulder Brands is the parent company owning GFA
17 Brands who's the operating company.

18 Q For purposes of this case, GFA Brands is listed
19 on the paperwork as the applicant. So going forward I'm
20 going to refer to the relevant company as GFA Brands.

21 Does that make sense to you?

22 A Yes, That's fine.

23 Q How long have you been employed by GFA?

24 A 2007.

25 Q And what is your title at GFA Brands?

1 A I'm on the board of directors, emeritus, and I
2 am senior advisor to the senior marketing teams.

3 Q And what are your general responsibilities in
4 your position on the board?

5 A I was full board member from 2005 when we
6 formed the company till the end of -- till the beginning
7 of this year, at which time I moved to emeritus status.
8 So I attend all the board meetings, but I do not vote.

9 Q And generally what are your responsibilities as
10 senior advisor to the marketing group?

11 A I advise the marketing teams in the --
12 primarily in areas of consumer marketing, advertising,
13 promotion, other aspects of consumer marketing across
14 the brands.

15 Q Have your responsibilities changed since you
16 first started working with the company?

17 A As senior advisor, no.

18 Q Before working with GFA Brands, did you have
19 any experience in the advertising industry?

20 A Yes. I've been in the advertising business
21 north of 50 years.

22 Q And can you tell us a little bit about your
23 background in the advertising industry?

24 A Sure. Spent a good bit of my time with W.B.
25 Doner who was a national agency. I was there 25 years,

1 was president for seven years during the '80s, sold my
2 interest in the company. I was a partner. Sold my
3 interest to my partners, started a consulting company --
4 practice, wasn't really a company, which I had for ten
5 years, from basically through the '90s. Then went back
6 on the agency business as the chairman of the board of a
7 regional agency located out of Baltimore, TBC. In '05 I
8 joined with Steve Hughes and on the -- and went on the
9 board of Boulder Specialty Brands, who was the original
10 acquisition company, and we acquired Smart Balance in
11 2007.

12 Q When you were working in the advertising
13 industry, can you give me some examples of some of your
14 more significant or well-known clients?

15 A Yes. In the consulting business I did a lot of
16 work with ConAgra, Healthy Choice, worked on Tropicana,
17 Nabisco, Florida Department of Citrus, Celestial
18 Seasonings. Prior to that I worked on McCormick. I
19 worked on Filbert Company, which was the pre- -- which
20 was the company that originated I Can't Believe It's Not
21 Butter in the margarine category. Worked for -- on
22 American Dairy Association.

23 THE REPORTER: Say that one more time. You
24 worked for?

25 THE WITNESS: Which one you want?

1 THE REPORTER: The last one you just said.

2 THE WITNESS: American Dairy Association.

3 BY MS. WILBERT:

4 Q Generally what were some of your
5 responsibilities with those brands?

6 A Primarily overseeing and advising in the areas
7 of consumer promotion, consumer marketing, and most
8 specifically advertising.

9 Q Are you familiar with the corporate history of
10 GFA Brands?

11 A Reasonably so.

12 Q Could you tell us a little bit about the
13 company starting with how it was formed?

14 A I think the company was formed by Bob Harris,
15 '96 or thereabout. And his first -- Bob's background
16 was -- also he came out of the advertising business long
17 before that. I think he had -- may have owned -- had
18 some -- some ownership in -- in Weight Watchers brands.
19 And he created the Smart Balance brand in '96. That was
20 a butter substitute, Smart Balance buttery spread.

21 Q And how did you become to be involved in the
22 company?

23 A I joined the Boulder Specialty Brands when we
24 first formed the acquisition company and was involved in
25 all of our inquiries and work that led up to the

1 purchase of Smart Balance and GFA. Then I went to work
2 with the brand we acquired.

3 Q Where does GFA Brands have offices today?

4 A Headquartered in Boulder, Colorado, and also
5 offices in Paramus, New Jersey. And one of the
6 companies we've acquired, Glutino, was headquartered in
7 Montreal.

8 Q Are you familiar with the products that GFA
9 Brands sells in connection with the Smart Balance
10 trademark?

11 A Yes.

12 Q Could you generally describe how you became
13 familiar with those products?

14 A We acquired -- we acquired the Smart Balance
15 brands, the spread -- buttery spread being the primary
16 one, but there are other -- there are products in their
17 line. In '07 -- and my responsibilities had to do with
18 the consumer promotion, consumer advertising primarily,
19 and I managed the major advertising agency who worked
20 with us on those brands.

21 Q Could you just run through some of the products
22 that GFA Brands sells in connection with the Smart
23 Balance trademark?

24 A Yes. There's a Smart Balance buttery spread;
25 and there's a line of buttery spreads of various

1 formulations, light, flax, omegas, olive -- with olive
2 oil, et cetera. We also have Smart Balance bottled
3 oils. We have Smart Balance peanut butter products,
4 several versions of peanut butter. We have a mayonnaise
5 product. We have a -- we have popcorn products. We
6 have both popped and kernel products.

7 Q That's good. What --

8 A Milk, that's a big brand. Smart Balance milk,
9 major product.

10 Q What was the first product bearing the Smart
11 Balance trademark that was introduced in the market?

12 A Smart Balance butter spread was the first.

13 Q And what year was that product introduced?

14 A '96 I think.

15 Q Are you generally familiar with the various
16 trademark applications that are at issue in this
17 dispute?

18 A Generally.

19 (Applicant's Exhibit 4 was marked for
20 identification.)

21 BY MS. WILBERT:

22 Q The court reporter's just handed you what's
23 been marked as Applicant's Exhibit 4.

24 A Uh-huh.

25 Q What is Exhibit 4?

1 A It's a trademark office...

2 Q Do you recognize this as one of the trademark
3 applications that is at issue in this dispute?

4 A Yes.

5 Q Midway down on Exhibit 4 there are goods and
6 services listed. Of those goods and services for
7 Exhibit 4 include vitamins, supplements,
8 vitamin-enriched beverages, meal replacement bars, and
9 liquid meal replacement. Did I read that correctly?

10 A Yes.

11 Q Is GFA Brands offering any of those products in
12 connection with the Smart Balance trademark today?

13 A We still have -- our milk product is a
14 vitamin-enriched beverage.

15 Q Does GFA brands have the intention to use the
16 Smart Balance trademark with the goods listed in
17 Application Exhibit 4 in the future?

18 A Yes. We're entrusted in these categories.

19 (Applicant's Exhibit 5 was marked for
20 identification.)

21 BY MS. WILBERT:

22 Q The court reporter has just handed you what's
23 been marked as Applicant's Exhibit 5.

24 A Yes.

25 Q What is Applicant's Exhibit 5?

1 A It's a trademark application for a range of
2 goods and services listed here.

3 Q And do you recognize this as the second
4 application that's at issue today?

5 A Yes.

6 Q And the goods in the second application
7 include -- it's a long list, so I won't read all of
8 them. But I just want to direct you to the right
9 section. It starts listing soy chips, includes snack
10 mixes, goes on and mentions nut- and seed-based snack
11 bars. Then there's a second -- second grouping of goods
12 starting with cake mix, frostings, cakes. Do you see
13 those lists?

14 A Yes, I do.

15 Q Looking at those lists, does GFA Brands offer
16 any of these products in connection with the Smart
17 Balance trademark today?

18 A We have a product that is a popcorn-based --
19 popped popcorn-based called Smart Balance nuggets.
20 These are popcorn enrobed with peanut butter.

21 Q Are there any other products that would fall
22 under the goods listed here?

23 A Under Smart Balance.

24 Q Correct.

25 A We have peanut butter. I don't know if that's

1 specifically -- this says nuts. We have peanut butter
2 products.

3 Q Does GFA Brands have the intent to use the
4 Smart Balance trademark on the goods that are listed in
5 Exhibit 5.

6 A Yes. We have a lot of interest in -- in these
7 categories.

8 Q Are you generally familiar with the trademark
9 registrations that GFA Brands has historically obtained?

10 A Yes.

11 (Applicant's Exhibit 6 was marked for
12 identification.)

13 BY MS. WILBERT:

14 Q The court reporter's just handed you what's
15 been marked Applicant's Exhibit 6. What is Exhibit 6?

16 A This is a -- this is an application or -- or
17 registration I suppose -- I guess for butter substitutes
18 and a -- and several other products under the Smart
19 Balance name.

20 Q I believe you testified earlier that the Smart
21 Balance trademark was first used on butter products in
22 1996; is that correct?

23 A Correct. Butter substitutes, yes.

24 Q Does GFA still use the Smart Balance trademark
25 on butter substitutes today?

1 A Yes.

2 Q From the time from 1996 through today has GFA
3 continuously used the Smart Balance trademark on butter
4 substitutes?

5 A Yes, they have.

6 Q Are you generally familiar with the packaging
7 that GFA uses on its butter substitute products?

8 A Yes, I am.

9 (Applicant's Exhibit 7 was marked for
10 identification.)

11 BY MS. WILBERT:

12 Q The court reporter's just handed you what's
13 been marked as Applicant's Exhibit 7. What is
14 Exhibit 7?

15 A Exhibit 7 is a -- an example of one of the --
16 of the packaging for -- a historical packaging for a
17 spreads product in a tub. This one being a light
18 buttery spread.

19 Q Roughly what period of time was this packaging
20 used?

21 A This -- this form of packaging has been used
22 for spreads since we acquired the business and prior to
23 that. It's sort of historical packaging. Current
24 packaging is -- is a different -- as of last year is a
25 different construction.

1 Q What's different about the current packaging?

2 A The current packaging is not a round tub. The
3 current packaging is a square, plastic tub.

4 Q And why the change?

5 A We were -- many of our trade -- major trade
6 customers, and particularly Walmart, came to us and
7 requested that we consider a packaging format change
8 to -- to provide them with greater -- greater
9 efficiency, shelf efficiency, stacking efficiency,
10 shipping, et cetera, et cetera. So we did.

11 Q On the current packaging is the Smart Balance
12 trademark similar to the depiction that's represented in
13 Exhibit 7?

14 A Yeah. The logo type is pretty much the same,
15 same type treatment. Some of the design elements are
16 generally the same, color green, yellow. There are
17 differences in the design because the shape is
18 different.

19 Q I believe the trademark -- well, trademark
20 registration that we just looked at also referenced
21 oils. Historically has GFA used the Smart Balance
22 trademark on cooking oils?

23 A Yes.

24 Q Roughly when did GFA first start using the
25 Smart Balance trademark on cooking oils?

1 A I would say cooking oils -- not sure, maybe --
2 before we purchased the company. They had cooking oils
3 before we purchased the company. So it had to be prior
4 to '07.

5 Q Based on your knowledge, has GFA Brands been
6 using the Smart Balance trademark on cooking oils from
7 before 2007 through the present?

8 A Yes.

9 (Applicant's Exhibit 8 was marked for
10 identification.)

11 BY MS. WILBERT:

12 Q The court reporter's just handed you what's
13 been marked Applicant's Exhibit 8. What is Exhibit 8?

14 A That's a trademark registration for peanut
15 butter.

16 Q And does GFA Brands use the Smart Balance
17 trademark on peanut butter today?

18 A Yes, we do.

19 Q When did GFA Brands first start using the Smart
20 Balance trademark on peanut butter?

21 A This says 2005.

22 Q Do you have any reason to believe that the 2005
23 date is inaccurate?

24 A I believe that's accurate.

25 Q For your knowledge -- for -- from your

1 knowledge, has GFA Brands been using the Smart Balance
2 trademark on peanut butter continuously from 2005
3 through 2014?

4 A Yes.

5 (Applicant's Exhibit 9 was marked for
6 identification.)

7 BY MS. WILBERT:

8 Q The court reporter's just handed you what's
9 been marked as Applicant's Exhibit 9. What is
10 Exhibit 9?

11 A That's a label that goes on the peanut butter
12 package, the jar.

13 Q Does -- does Exhibit 9 accurately represent the
14 manner in which GFA Brands has used the Smart Balance
15 trademark on peanut butter products?

16 A Yes, logo type, lock-off type face, et cetera.

17 (Applicant's Exhibit 10 was marked for
18 identification.)

19 BY MS. WILBERT:

20 Q The court reporter's just handed you what's
21 been marked as Applicant's Exhibit 10. What is
22 Exhibit 10?

23 A The trademark registration for popcorn.

24 Q When did GFA Brands first start using the Smart
25 Balance trademark on popcorn?

1 A This says 2002.

2 Q Are you familiar with the packaging that GFA
3 has traditionally used on its popcorn products?

4 A Yes.

5 MS. WILBERT: I think it makes sense to mark
6 these as a group.

7 THE COURT REPORTER: Okay.

8 (Applicant's Exhibit 11 was marked for
9 identification.)

10 BY MS. WILBERT:

11 Q The court reporter's just handed you what's
12 been marked as Exhibit 11.

13 A Yeah.

14 Q What is Exhibit 11?

15 A These are historical popcorn packages.

16 Q Approximately for what period of time did GFA
17 Brands use the packages depicted in Exhibit 11?

18 A These are pretty representative of the packages
19 that we had on popcorn from the time that we purchased
20 the company. There's been some changes but relative.

21 Q Is GFA Brands currently using the Smart Balance
22 trademark on any popcorn products today?

23 A Yes. Our popcorn products are cobranded with
24 another company, JOLLY TIME brand, which is owned by
25 American Pop Corn Company.

1 (Applicant's Exhibit 12 was marked for
2 identification.)

3 BY MS. WILBERT:

4 Q What is Exhibit 12?

5 A Exhibit 12 is a licensing agreement between GFA
6 and American Pop Corn who were the makers of JOLLY TIME
7 brand.

8 Q Why did GFA Brands enter into the license
9 agreements that's shown as Exhibit 12?

10 A JOLLY TIME approached us wanting to make an
11 arrangement where -- to be able to use the Smart Balance
12 blend of oils and also to use the Smart Balance brand
13 name because we had some strength in that category as a
14 healthy brand of popcorn. We knew the -- some of our --
15 some of our executives knew the -- the family from
16 American Pop Corn. And it seemed to -- it was
17 strategically a good move for us and for them to combine
18 those two forces as two brands and give it a more
19 efficient marketing and production situation.

20 Q Was there ever a significant period of time
21 from 2002 through 2014 where Smart Balance was not being
22 used in connection with popcorn?

23 A No.

24 Q Do you consider popcorn to be a snack food?

25 A Yes.

1 Q Other than popcorn, is the Smart Balance
2 trademark used on any products that you'd consider snack
3 foods?

4 A I think I mentioned the -- the nuggets, which
5 are a form of popcorn.

6 Q Tell me a little bit about that product. When
7 did Smart Balance introduce the nugget product to the
8 market?

9 A We introduced the nugget product last year.
10 That's a popcorn product that's enrobed with peanut
11 butter. And it's principally been distributed at Costco
12 stores.

13 Q Balance Bar has a number of different
14 trademarks that are at issue in this deposition.
15 Specifically Balance Bar has the Balance trademark, the
16 Balance Gold trademark, the Balance Bar Gold trademark,
17 the Balance Bare mark, and the Balance Bar mark. Going
18 forward I'm going to refer to these marks as the Balance
19 Bar marks. Does that make sense?

20 A Sure.

21 Q Since 1996 when the Smart Balance mark was
22 first used on butter substitutes, are you aware of any
23 confusion between the products offered under the Smart
24 Balance trademark and products offered under any of the
25 Balance Bar marks?

1 A I'm not aware of any confusion.

2 Q Thinking particularly about the snack foods
3 that GFA sells in connection with the Smart Balance
4 trademark, are you aware of any confusion between the
5 snack products offered under the Smart Balance mark and
6 any of the Balance Bar products?

7 A No, I'm not.

8 Q I'd like to discuss briefly with you the stores
9 and locations where products bearing the Smart Balance
10 trademarks are sold. Are you generally familiar with
11 the stores that carry Smart Balance products?

12 A Yes, I am.

13 Q Can you describe for me the types of stores in
14 which products bearing the Smart Balance trademark are
15 sold?

16 A There are several classes of -- of retail
17 trade. Conventional grocery stores, that would be
18 Kroger, Safeway, Ahold, Publix, et cetera. Then we also
19 sell in mass merchants who sell food. That would
20 principally be Walmart and Target. And we sell through
21 the club stores, which would be Costco, BJ's, Sam's. We
22 also sell our products through food service as well.

23 You're talking about in the U.S.; correct?

24 Q Correct.

25 (Applicant's Exhibit 13 was marked for

1 identification.)

2 BY MS. WILBERT:

3 Q The court reporter's just handed you what's
4 been marked as Applicant's Exhibit 13. What is
5 Exhibit 13?

6 A That is a list of Smart Balance customers for
7 the years '10, 2011, 2012.

8 Q Does this list appear to be in any particular
9 order?

10 A Yes. It appears to be in order of size of
11 sales, our sales.

12 Q So interpreting this list, if I look at Column
13 A, it's labeled Smart Balance 2010 Customer List; and
14 going down the list it lists Walmart, Publix, Kroger,
15 C&S, Wakefern, SuperValu, and it continues. Is that the
16 list of customers to which GFA sold Smart Balance
17 products in 2010?

18 A Yes.

19 Q This listing ends with 2012. Do you have a
20 sense of if GFA Brands sold their product to similar
21 customers in the years 2013 and 2014?

22 A Yes. The customer list would be the same.
23 There have been some consolidation on the retail side.
24 Some people have bought -- Kroger bought Harris Teeter,
25 for example.

1 Q Looking back historically, if you think about
2 the time from 2007 through 2010 when this list starts,
3 are the list of customers roughly the same?

4 A Yes.

5 Q Do you have a sense of what percentage of
6 conventional grocery stores sell products bearing the
7 Smart Balance trademark?

8 A We're in 97 percent, Smart Balance buttery
9 spreads of 97 percent ACV, which is all-commodity
10 volume, which means the percentage of volume that's sold
11 through retail stores.

12 Q Turning to the third page there's an entry for
13 UNFI. What is UNFI?

14 A UNFI is a distributor -- wholesaler and
15 distributor principally involved in the natural channels
16 but also in conventional.

17 Q When you sell to a distributor, logistically
18 how do end users end up getting your product?

19 A You sell to the distributor. Distributor takes
20 possession of the product, and then they deliver the
21 product to the -- to the retail stores. Usually the
22 smaller chains are who you deal with with distributors.

23 Q So looking at this list, does this list appear
24 to you to be the customers to whom GFA Brands sells
25 directly?

1 A Yes.

2 Q Are there any customers or categories of
3 customers that are not reflected in Exhibit 13?

4 A No. I don't think of any categories of
5 customers that aren't here.

6 Q I believe earlier you had mentioned food
7 service. Are food service clients reflected in
8 Exhibit 13?

9 A I don't think so, but I'm not positive. I'm
10 not seeing any food service names that I recognize.

11 Q What are some of the food service clients that
12 GFA Brands sells to?

13 A We sell to Marriott, Sedesto [phonetic]
14 Marriott. We sell to -- to Disney. And then we sell to
15 major food service distributors.

16 Q What are some of the major food service
17 distributors that you sell to?

18 A I'm not going to have that name on the top of
19 my head. I'm sorry.

20 Q That's fine. We can come back to it if you're
21 not remembering right now.

22 A Okay.

23 (Applicant's Exhibit 14 was marked for
24 identification.)

25 BY MS. WILBERT:

1 Q The court reporter's just handed you what's
2 been marked as Exhibit 14. What is Exhibit 14?

3 A Exhibit 14 is a listing of gross sales for the
4 total Smart Balance brand and also for the spreads
5 products and among our major customers.

6 Q In your position do you have the opportunity to
7 review sales figures for GFA Brands, in particular the
8 Smart Balance brand?

9 A Yes, I see sales figures. Yes.

10 Q Based on your understanding of the sales
11 figure, does Exhibit 14 accurately reflect the gross
12 sales figures of products sold in connection with the
13 Smart Balance trademark?

14 A Yes, these look correct.

15 (The following is attorneys' eyes only:)

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BY MS. WILBERT:

Q I'd like to switch gears and talk to you about marketing and advertising now.

A Yes.

Q In advertising does GFA ever use the term Smart without the term Balance in connection with Smart

1 Balance trademark?

2 A No.

3 MR. SCHROEDER: One point, we're no longer
4 confidential; right? We're back to --

5 MS. WILBERT: Yes, sir. Yes. We can go off
6 confidential.

7 BY MS. WILBERT:

8 Q In advertising does GFA ever use the term
9 Balance as a standalone trademark?

10 A No.

11 Q As far as you know in connection with products
12 bearing the Smart Balance trademark, does GFA always use
13 the term smart and balance together when trying to
14 communicate the source of the product as a trademark
15 would communicate?

16 A Yes.

17 Q What is the connotation or message to consumers
18 that GFA Brands is trying to communicate by using Smart
19 Balance as a trademark?

20 A That it is an intelligent choice, and it is a
21 good balance. It is a great balance of taste and
22 nutrition.

23 Q What does GFA Brands do to communicate that
24 message to consumers?

25 A We do a significant amount of consumer

1 advertising in mass media, television, radio, magazines,
2 in addition to a -- particularly recently a more heavy
3 involvement in what are called online media. That would
4 be websites, social media, digital display media,
5 in-store media as well, signage in stores, et cetera.

6 Q What are some examples of places that GFA has
7 advertised in print media?

8 A A wide range of magazines, Prevention, Men's
9 Health, Cooking Light, Better Homes and Gardens, Good
10 Housekeeping, Family Circle.

11 MS. WILBERT: If we can go back under
12 attorneys' eyes only, please.

13 (The following is attorneys' eyes only:)

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ATTORNEY'S EYES ONLY

MS. WILBERT: We can go off the attorneys' eyes
only section.

1 (Applicant's Exhibit 17 was marked for
2 identification.)

3 BY MS. WILBERT:

4 Q The court reporter has just handed you what's
5 been marked as Exhibit 17. What is Exhibit 17?

6 A This is a trade ad for ShopRite.

7 Q And I believe if you page through, there are
8 trade ads for a few other stores; is that correct?

9 A Right. This -- these are circulars typically.

10 Q How does -- or what does GFA Brands do to have
11 a Smart Balance product featured in one of these
12 circulars?

13 A You give promotional discounts to the retailer
14 in exchange for placement in their -- in their house
15 circulars and their house newspaper ads.

16 Q Previously when we were discussing some of the
17 financial information, we discussed figures related to
18 total trade spend. Is Exhibit 17 an example of a
19 circular that would go into the trade-spend budget?

20 A Yes. Yes. That would be part of a trade
21 promotion budget.

22 Q How long has GFA Brands been advertising the
23 Smart Balance trademark using store circulars?

24 A I would -- certainly from 2007. From the time
25 that we've owned it we've always been involved in trade

1 circulars and promotion. I would think well before
2 that.

3 Q Are you aware of any instances of confusion
4 between the Smart Balance trademark as shown in any of
5 the store circulars and any other products shown in a
6 store circular?

7 A No, I'm not aware of any confusion.

8 (Applicant's Exhibit 18 was marked for
9 identification.)

10 BY MS. WILBERT:

11 Q The court reporter's just handed you what's
12 been marked as Exhibit 18. What is Exhibit 16?

13 A This is a store coupon.

14 Q What role do coupons play in GFA Brands
15 advertising of products sold under the Smart Balance
16 trademark?

17 A Couponing is -- is typically listed in the --
18 in the promotion budget as opposed to the advertising
19 budget per se. Coupons are a significant portion of our
20 total marketing spent, roughly equal to the advertising,
21 media advertising part.

22 (Applicant's Exhibit 19 was marked for
23 identification.)

24 BY MS. WILBERT:

25 Q The court reporter's just handed you what's

1 been marked as Exhibit 19. What is Exhibit 19?

2 A Exhibit 19 is a report on a running festival
3 that we were a sponsor of. This one happened to be in
4 Baltimore.

5 Q On Page -- part way through it ends with the
6 numbers 9744. The page reference total sample 12,000.
7 What does that mean?

8 A How many -- how many product samples we
9 distributed during the -- the two days of this event.

10 Q So at the event, in addition to just being a
11 sponsor, GFA was actually distributing product to
12 consumers; correct?

13 A Yes. We had tables at the tents. We also had
14 places where people could sample our products at the --
15 at the event.

16 Q Why does GFA Brands sponsor runs like the one
17 shown in Exhibit 19?

18 A We position the brand as a -- as a health- --
19 health-oriented brand. So people who are participants
20 in things like marathons are very active,
21 health-oriented people, and they tend to talk to each
22 other. And that is a good group of people for us to
23 be -- to have our products associated with.

24 Q What particular products were you providing as
25 samples in the Baltimore running festival?

1 A Popcorn was a big one. We also sampled peanut
2 butter, and we also sampled some buttery spread
3 products.

4 Q Other than the Baltimore running festival, has
5 GFA sponsored any other runs or festivals?

6 A Yes. Yes. We have done a number of these
7 kinds of things, the Boulder -- the Boulder -- the
8 Boulder run. There was a big one in Atlanta, one --
9 another one in Texas. We've done a number of marathons
10 and running events.

11 (Applicant's Exhibit 20 was marked for
12 identification.)

13 BY MS. WILBERT:

14 Q The court reporter has handed you what's been
15 marked as Exhibit 20.

16 A Yes.

17 Q What is Exhibit 20?

18 A Exhibit 20 is a report detailing public
19 relations, publicity efforts, and activities for -- for
20 Smart Balance during the, looks like, '09 period.

21 Q On Page 2 Exhibit 20 lists some magazines. It
22 appears to be media outlets for example. I see
23 Prevention. I see Men's Health, Self. What is this
24 summarizing?

25 A This is summarizing the exposure, the

1 circulation that we received for various stories in
2 which our products were featured.

3 Q And what did GFA Brands do to have these
4 entities feature or reference the Smart Balance
5 trademark?

6 A We -- we -- we have a PR outreach program in
7 which we contact the editors of these publications,
8 provide them with samples and product information so
9 that they're aware of us and that hopefully will give us
10 some consideration when they're doing stories relative
11 to our product category.

12 Q Other than providing them with product samples,
13 is GFA Brands paying for a placement in these?

14 A No. No.

15 Q This is an example of a report from 2009. Does
16 GFA Brands continue to work with PR agencies on
17 placements of this sort?

18 A Yes, we do.

19 Q And some of these placements appear to be
20 recipes?

21 A Yes.

22 Q Is GFA Brands -- well, is the Smart Balance
23 trademark often referred to in recipes?

24 A Yes. Yes, we get a lot of mention in recipes.
25 (Applicant's Exhibit 21 was marked for

1 identification.)

2 BY MS. WILBERT:

3 Q The court reporter has just handed you what's
4 been marked as Exhibit 21. What is Exhibit 21?

5 A Exhibit 21 is a -- is from Men's Health
6 magazine, and it's -- they regularly list what they
7 consider to be the best products in certain categories.
8 In this case our popcorn was named their best.

9 Q Did GFA Brands have to pay for Men's Health to
10 list the Smart Balance popcorn as one of their best
11 products?

12 A No.

13 Q What does this tell you about the brand
14 strength of the Smart Balance trademark?

15 A Well, it's a very positive mention. Men's
16 Health is a big circulation magazine. It's got a lot of
17 respect and -- and good readership. And when we're
18 named as -- as best in one of their categories, that's a
19 high recommendation.

20 (Applicant's Exhibit 22 was marked for
21 identification.)

22 BY MS. WILBERT:

23 Q The court reporter's just handed you what's
24 been marked as Applicant's Exhibit 22. What is Exhibit
25 22?

1 A Exhibit 22 appears to be a screen graph of our
2 website.

3 Q And on the front is this the new packaging that
4 you testified about earlier?

5 A This is the new packaging, the square package
6 that I referenced earlier, and also our change to a
7 non-GMO formula, which is new this year.

8 Q Why did GFA Brands change to a non-GMO format?

9 A We have a lot of data that says that our
10 consumers are very health oriented. They're very
11 concerned with ingredient statements, and we've got a
12 lot of data that says they have real concern for -- for
13 what's in their products and particularly have some
14 concerns for GMOs. Smart Balance was the first brand of
15 spreads to remove partially hydrogenated oils. That was
16 back in -- I guess when Bob founded the company. So
17 we've been a leader in providing the consumer with what
18 we believe the healthiest alternatives. So we took
19 trans fats out. We were the first to take trans fat
20 out, and we're the first spread to go all non-GMO.

21 Q While we're talking about your consumers, who
22 are the target consumers for the Smart Balance product?

23 A Target -- the target consumer is -- it's an
24 all-family product. Women are the principal purchaser,
25 but it's consumed with- -- within all family. Our

1 consumers are generally premium-oriented purchasers, and
2 are people who are actively interested in health and
3 purchase products that are health oriented. They are
4 label conscious people and ingredient conscious people
5 and concerned with -- with -- with health.

6 Q What does it mean to you to be a label
7 conscious consumer or an ingredient conscious consumer?

8 A These are people who -- who actively pay
9 attention to the ingredients in products. They
10 actually -- they actually read the labels to see what's
11 in them, and they're conscience and aware of negatives
12 like trans fats, for example.

13 Q On the spectrum of price, where do the products
14 bearing the Smart Balance trademark typically fall
15 within any of the categories in which they're in?

16 A We're generally in the -- in the premium side
17 of -- of the spectrum of price.

18 Q So what does that mean?

19 A Smart Balance tub of -- of spreads is \$3.49.
20 You can get a package of Parkay for 99 cents.

21 Q So there's a significant --

22 A There's a significant difference between them.

23 Q Turning back to Exhibit 22, how long has GFA
24 Brands been maintaining a website?

25 A We've always had a website, and in recent years

1 our website has become much more of a focus of our
2 marketing activity.

3 Q What does that mean? What are you doing with
4 the website today?

5 A We promote our website much more aggressively
6 today than we did several years ago. Last year we had
7 two and a half million people who visited our website.
8 And we keep pre- -- copious data on -- on their visits,
9 who they are, whether they're repeat, whether -- how
10 much time they spend, what they look at. You get all of
11 that data. Two and a half million people is a lot of
12 people for a website like that.

13 Q Turning to the last page of the exhibit, it
14 looks like there's some symbols that are, as I recognize
15 them, associated with things like Facebook, Twitter,
16 Pinterest, Instagram. Does GFA Brands maintain a
17 Smart-Balance-focused Facebook page?

18 A Yes, we do.

19 Q What kind of information does GFA Brands put on
20 its Facebook page?

21 A We have -- we've been very aggressive in
22 building our Facebook, what they call, fan base. So
23 these are people who check to actually like you on
24 Facebook. We have -- we started aggressively pursuing
25 social media in '12, middle part of '12. We now have

1 570,000 likes, people who like us on Facebook. We post
2 information, coupons, recipes several times a week to
3 those people.

4 Q You just mentioned recipe in connection with
5 Facebook, but I also know on the first page of the
6 website it lists recipes. What types of recipes does
7 GFA Brands promote in connection with the Smart Balance
8 trademark?

9 A We promote a wide range of recipes. These are
10 meals, meal suggestions that use our products, desserts,
11 snacks, a wide range of -- of applications of our
12 products in various -- recipes are a very important part
13 of the food business in general and certainly a very
14 important part for us.

15 Q Thinking about some of the trademark goods that
16 are at issue in this case, were there any recipes that
17 relate to any of the snack mixes or snack bars or cakes,
18 cupcakes, sorts that are --

19 A Yes.

20 Q -- at issue here?

21 A There are a lot of recipes for cookies, cakes,
22 muffins, trail mixes, popcorn-based snacks.

23 Q I see the bird for Twitter. What does GFA
24 Brands do on Twitter in connection with the Smart
25 Balance trademark?

1 A We have a following on Twitter. We -- we
2 communicate on a regular basis with the people who
3 follow us on Twitter. Facebook is our primary social
4 media outlet, but we do use Twitter. We use Instagram
5 and Pinterest as well.

6 Q Does GFA Brands do anything to monitor the
7 impact its advertising has on its customers?

8 A Yes.

9 Q What do they do?

10 A We conduct and have conducted from the
11 beginning a twice -- twice a year what's called a
12 tracker. And the tracker is basically an awareness
13 measure that not only measures awareness but also
14 measures people's attitudes, willingness to recommend to
15 friends, competitive attitude, reported purchase and
16 frequency of purchase, share of requirements, which is
17 the percentage of -- of purchasing in that category that
18 we capture.

19 (Applicant's Exhibit 23 was marked for
20 identification.)

21 BY MS. WILBERT:

22 Q What is Exhibit 23?

23 A Exhibit 23 is an example of these tracker
24 studies that we've talked about, I just talked about.
25 This is the Wave 12, which was May -- reported -- report

1 is May 2013. The actual tracking was probably in
2 February. Takes a couple months to get these reports
3 done.

4 MS. WILBERT: I'd like to mark this attorney's
5 eyes only while we're talking about the actual
6 results.

7 (The following is attorneys' eyes only:)

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ATTORNEYS' EYES ONLY

MS. WILBERT: We can go off of attorneys' eyes only now.

BY MS. WILBERT:

Q Are there other trademarks that are owned by GFA Brands?

A Yes.

Q What are some of the other trademarks?

A Earth Balance is another one of our trademarks. We also now own Glutino foods. We own Udi's. We own Evol Brand, which is a relative new brand for us, frozen. And we have a brand of dietetic foods, Level Life. So we have six brands.

Q What is the Earth Balance brand? What's that message? What type of products do you sell?

A Earth Balance is a -- has been primarily directed into the natural channels, but in recent years we've expanded Earth Balance distribution into

1 conventional. Earth Balance makes a -- a spread, as we
2 do, Smart Balance does. Earth Balance also has a soy
3 milk, and they have a range of snack products,
4 popcorn-based and crackers.

5 Q Are you personally aware of any instances of
6 confusion between any Earth Balance products and any of
7 the Balance Bar trademarks that we discussed earlier?

8 A I'm not aware of any confusion between Earth
9 Balance.

10 Q Who is someone at the company that would be
11 most knowledgeable about the Earth Balance brand?

12 A Marketing manager would be -- marketing
13 director would be Adriane Little.

14 Q You mentioned Glutino. What products are sold
15 under the Glutino trademark?

16 A Glutino's products are principally -- these are
17 all products that are directed to the gluten-free
18 consumer. These are people who are either celiac or --
19 or have some aversion in tolerance to wheat, to gluten.
20 And there's a very large portion of people who today are
21 buying gluten-free products simply because they feel
22 they are better for them, healthier.

23 The Udi's products are very oriented to snack
24 products. There's a wide range of crackers, cookies,
25 muffins, breakfast bars, granola bars. The Udi's

1 products are more baked products. Their principal
2 volume is in bread but also have a range of snacks and
3 pizza and are branching into frozen foods as well.

4 Q I think you also mentioned Evol. What are the
5 Evol products that are sold by GFA?

6 A The Evol products are a relatively new -- new
7 company, few years old. We bought them last year. They
8 are frozen foods, started with burritos. Now have a
9 range of bagged frozen products, also the ones that come
10 in the crocks and are expanding very rapidly. They're
11 positioned on a proposition of pure and simple and that
12 their ingredient statements is much, much more -- it's
13 much cleaner. Lean Cuisine probably -- you look at a
14 Lean Cuisine dinner, Lean Cuisine entree, probably got
15 135 ingredients listed, and 90 percent of them you need
16 to be a chemist to understand what they are. Evol, for
17 example, would have ten, and you would know what they
18 were.

19 Q Does GFA Brands currently offer any bar
20 products under any of its trademarks?

21 A Yes. Glutino has granola bars and breakfast
22 bars, and Level Life has low glycemic and carbohydrate
23 control bars.

24 Q Would you be in a position to describe what GFA
25 Brands knows about the consumers who consume their bar

1 products?

2 A Yes. Well, the -- certainly the gluten-free
3 consumers are looking for products that don't contain
4 wheat or at least -- either because they can't. And the
5 people who consume our Level Life products are people
6 that have some -- some sugar, carbohydrate concern, if
7 not diabetic. At the least they have -- they have
8 concerns about how much sugar and carbohydrates they
9 consume.

10 Q Are you aware of any other consumer packaged
11 goods that use the word balance in their trademark?

12 A There's a supplement line Nature's Balance that
13 I'm aware of.

14 Q Are you aware --

15 A I think that -- go ahead.

16 Q Are you aware of any confusion between that
17 supplement brand and GFA's Smart Balance products?

18 A No.

19 Q Are you aware of any confusion with that
20 supplement brand and GFA's Earth Balance products?

21 A No.

22 MS. WILBERT: We've been going for a little
23 over an hour now. Would now be okay for a break?

24 MR. SCHROEDER: That's fine.

25 MS. WILBERT: Okay. Off the record.

1 (Off-the-record discussion.)

2 BY MS. WILBERT:

3 Q Are you aware of a product called Simply
4 Balanced?

5 A Yes.

6 Q How did you become aware of that product?

7 A That's a -- that's a Target private-label
8 product or controlled store product. That was
9 originally part of their Archer Farms line.

10 Q And how did you personally become aware of that
11 product?

12 A Marketing and sales people talked about it.

13 Q So it was through your position --

14 A Yeah.

15 Q -- at GFA Brands?

16 A Yeah.

17 Q And has GFA Brands taken any action with
18 respect to the Simply Balanced trademark use?

19 A I know we're aware of it, but I don't -- I
20 would have to defer to Tim Kraft or the legal guys. I
21 don't know that -- I don't know that we've taken any
22 specific action. We're aware of it.

23 Q Are you aware of any instances of confusion
24 between the Simply Balance product and the Smart Balance
25 products?

1 A No, I'm not aware of the confusion.

2 MS. WILBERT: I have no further questions.

3 MR. SCHROEDER: Let's take a short break then,
4 and then I have a few.

5 (Break taken.)

6 CROSS-EXAMINATION

7 BY MR. SCHROEDER:

8 Q Can I ask you to pull Exhibit 4 out of your
9 stack?

10 A Okay.

11 Q Ms. Wilbert asked you a few questions about
12 this document earlier. I just wanted to confirm a few
13 points.

14 A Sure.

15 Q With respect to the list of goods and services,
16 has GFA ever used the mark Smart Balance in connection
17 with the sale of vitamins?

18 A No, not to my knowledge.

19 Q Has GFA ever used the mark Smart Balance in
20 connection with the sale of supplements?

21 A Not Smart Balance.

22 Q Has --

23 A That I -- that I know of.

24 Q Okay. Thank you. Has GFA ever used the mark
25 Smart Balance in connection with the sale of meal

1 replacement bars?

2 A Not that I know of.

3 Q Has GFA ever used the mark Smart Balance in
4 connection with the sale of liquid meal replacements?

5 A Not that I know of.

6 Q And I would ask you to turn to what was marked
7 as Applicant's Exhibit 5.

8 A Okay.

9 Q And, again, looking at the list of goods and
10 services, has GFA ever used the mark Smart Balance in
11 connection with the sale of nut- and seed-based snack
12 bars?

13 A Not that I know of.

14 Q Has GFA ever used the mark Smart Balance in
15 connection with the sale of granola-based snack bars?

16 A Not that I know of.

17 Q When you were testifying earlier, you mentioned
18 something you referred to as a nugget product.

19 A Yes.

20 Q Can you explain to me exactly what that is?

21 A The nugget product is a -- is a popcorn-based
22 snack, and it's a popcorn that is enrobed with peanut
23 butter.

24 Q So obviously sold as a pop product. The
25 popcorn is popped?

1 A Yes, in a bag.

2 Q Okay. Sold in a bag form.

3 A Yes.

4 Q Is it sold alongside your unpopped popcorn?

5 A In a different section I think. It's sold
6 through Costco. I think it's in a different section.

7 Q And how long has that product been on the
8 market for?

9 A This past year.

10 Q Do you know when it was introduced?

11 A No.

12 Q And it's sold only -- sorry.

13 A Go ahead. Sorry.

14 Q And it's sold only in Costco at this point?

15 A I believe our distribution is only in Costco at
16 this point.

17 Q Is it going to be just a Costco brand?

18 A No.

19 Q So you do expect to sell it nationally?

20 A We expect to expand it.

21 Q Any plans for when it will be expanded?

22 A No. We'll see. You know, we're measuring our
23 results and so far I think are good in Costco. But
24 we'll look for opportunities to expand as we go.

25 Q Is it currently in all Costco stores?

1 A I'm not sure. Maybe in -- not sure if it's in
2 all Costcos. It's in a number of divisions, but I don't
3 know how many.

4 Q Well, earlier when you testified, Ms. Wilbert
5 asked you about the percentage of grocery stores that
6 the Smart Balance brand is in. And I believe you
7 answered something to the effect of 97 percent of ACD;
8 is that correct?

9 A ACV.

10 Q ACV.

11 A All commodity volume.

12 Q Can you explain further what exactly that
13 means?

14 A All commodity volume is the percentage of
15 volume in a given category that those stores would
16 represent. So if you say, I'm in 97 percent ACV, that
17 means that you are in stores that sell 97 percent of all
18 the products in that category.

19 Q So does that somehow translate into the actual
20 number of grocery stores?

21 A And their size.

22 Q Is there a direct correlation?

23 A Correlation to the number and size. So it's a
24 volume measure.

25 Q Okay. So that wouldn't mean, though, that

1 you're actually in 97 percent of grocery stores?

2 A No. It means you are represented in 97 percent
3 of the volume that goes through grocery stores.

4 Q Okay. Thank you.

5 A So the change -- it will change -- the Krogers
6 of the world are going to have a much higher percentage
7 of the all commodity volume than they do of the total
8 number of stores because they're bigger stores.

9 Q Okay. That makes sense.

10 Can I ask you to pull out what's marked as
11 Applicant's Exhibit 23?

12 A Uh-huh.

13 Q And when we were looking at Pages 3 and 4, you
14 had testified regarding the unaided awareness and total
15 awareness.

16 A Yes.

17 Q Okay. With respect to total awareness, I
18 believe you testified something to the effect of that
19 would be measured by asking the participant, Have you
20 ever heard of blank.

21 A Yes.

22 Q Okay. Is -- that was --

23 A Total awareness, yes. It's aided, yes.

24 Q Aided. Can you expand that? When you said,
25 Have you ever heard of blank, what exactly happens in

1 that sort of survey?

2 A You have a list of -- a list of brands, and you
3 ask consumers, Have you ever heard of these brands?

4 Q And you give specific brands at that point.

5 A If it's aided, yes.

6 Q So you would say, Have you ever heard of Smart
7 Balance? Have you ever heard of --

8 A I Can't Believe It's Not Butter? Have you ever
9 heard of Land O'Lakes?

10 Q Okay. Thank you.

11 A The aid question always precedes the unaided.
12 I mean, the aided -- unaided question precedes the aided
13 question.

14 Q And the unaided question would be, for example,
15 Can you name --

16 A Can you name butter substitutes? What comes to
17 mind?

18 Q Okay. If I ask you to back up to Applicant's
19 Exhibit Number 22 --

20 A Uh-huh.

21 Q -- with respect to this document, you had
22 testified briefly about recipes and how there are
23 recipes that use Smart Balance trademark as part of the
24 recipe.

25 A Yes.

1 Q Particularly I think you mentioned cookies and
2 cakes?

3 A Yes.

4 Q Can you expand exactly as to what ingredients
5 those recipes are referring to?

6 A You would use Smart Balance cooking oil. You
7 could use Smart Balance spread in preparation of cookies
8 and cakes. You can use Smart Balance peanut butter.

9 Q So those recipes would be referring to a Smart
10 Balance product as one of the ingredients of the recipe;
11 correct?

12 A Yes.

13 Q Okay. Thank you.

14 Like to ask you to turn back -- sorry,
15 Applicant's Exhibit 23 again.

16 A Uh-huh.

17 Q And if I can ask you to turn to Page 11.

18 A Uh-huh.

19 Q Now, when you're referring to franchise users,
20 I believe you testified that this would refer to a
21 larger group of people; is that --

22 A Yes.

23 Q -- your testimony? What exactly did you mean
24 by larger group of people?

25 A There are people -- there are people that

1 buy -- the previous section refers to people who buy
2 Smart Balance spreads. This respects -- this respect --
3 this talks about people who are purchasers of any Smart
4 Balance product. So there are some people who buy Smart
5 Balance peanut butter, for example, who don't buy
6 spreads. People buy Smart Balance milk who don't buy
7 peanut butter.

8 Q But, now, isn't the spread category the
9 substantial part of the Smart Balance business?

10 A The spreads category is the biggest part of our
11 business, yes.

12 Q So wouldn't the actual number of the consumers
13 buying the Smart Balance buttery spread be much greater
14 than the number of consumers buying all of its other
15 products?

16 A No.

17 Q Why do you say that?

18 A Because there are people who -- because the
19 spreads buyers are included in the franchise number.

20 Q Okay.

21 A That's inclusive of that.

22 Q Okay. That makes more sense, then.

23 A Yeah. Sure.

24 Q So it's the buttery spread bars plus --

25 A Plus all the other stuff.

1 Q Okay. And ask you to turn to Page 14 of
2 Applicant's Exhibit 23.

3 A Yes.

4 Q Now, you were asked a question about the
5 significance of this 84 percent number on the top of
6 this page.

7 A Right.

8 Q Do you recall testifying about that number?

9 A Yes.

10 Q And can you explain to me again exactly what
11 that 84 percent number means?

12 A That means of all of the people who buy any
13 Smart Balance product, any one of them, 84 percent buy
14 at least two.

15 Q Okay. And then I believe the follow-up
16 testimony was directed to how that information might
17 affect confusion if the Smart Balance brand expands --
18 correct -- if you recall?

19 A Yes.

20 Q I believe Ms. Wilbert asked something to the
21 effect of how does that information -- how would that
22 information in fact be confusing if Smart Balance would
23 expand its brands to other product categories.
24 Something to that effect.

25 A Yes.

1 Q And your answer was?

2 A It -- it's a demonstration that people are
3 interested and in fact do purchase Smart Balance across
4 more than one category.

5 Q Okay. I believe you said something to the
6 effect that Smart Balance purchasers are willing to
7 follow the brand into other categories?

8 A Yes. We have data that tells us that.

9 Q And from that you conclude that if Smart
10 Balance were to expand, you do not see confusion among
11 these consumers?

12 A Correct.

13 Q What about consumers who are not Smart Balance
14 purchasers? So, for example, in the nutrition brand
15 category, there are certainly consumers who are not
16 Smart Balance purchasers.

17 A Uh-huh. I'm sure there are.

18 Q How would the fact -- let me start over.
19 Does this 84-percent number have any
20 significance on consumers who are not Smart Balance
21 purchasers with respect to confusion?

22 A I'm not sure I understand your question.

23 Q Let me -- let me -- let me try to rephrase
24 that.

25 A Yeah. I'm sorry.

1 Q No. No. Let me ask you a clearer question.

2 I believe from -- from how I understood your
3 testimony, the fact that -- according to this document,
4 84 percent of consumers, Smart Balance purchasers buy
5 more than one product.

6 A Yes.

7 Q You believe that if Smart Balance expands its
8 product category those consumers would not be confused?

9 A I believe that those consumers would not be
10 confused.

11 Q Okay. So my question, then, is what about the
12 consumers who are not Smart Balance purchasers?

13 A Well, we know that Smart Balance has a 70-plus
14 percent awareness recognition among all shoppers. So
15 the Smart Balance brand is very well-known. So if we
16 put the Smart Balance brand on other categories, I don't
17 think there would be confusion.

18 Q What about the remaining 24 percent of
19 consumers who are not aware of the Smart Balance brand?
20 Do you have any data that would support that they would
21 not be confused?

22 A I -- I don't believe that they would. I can't
23 understand why they would be if 75 percent of the people
24 are already aware of us.

25 MR. SCHROEDER: No further questions from me.

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MS. WILBERT: Okay. Thank you for your time.
You're off the hook for today.

(Witness excused.)

(Deposition concluded at 12:45 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Samantha Cordova, FPR, and a Notary Public,
State of Florida, certify that **WILLIAM HOOPER** personally
appeared before me on July 15, 2014, and was duly sworn.

WITNESS my hand and official seal on this
29th day of July, 2014.


Samantha Cordova, FPR



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REPORTER'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Samantha Cordova, certify that I was authorized to and did stenographically report the deposition of WILLIAM HOOPER; that a review of the transcript was not requested; and that the foregoing transcript, pages 1 through 69, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED on this 29th day of July, 2014,
Jacksonville, Duval County, Florida.

Samantha Cordova

1 STATE OF FL)
2 COUNTY OF St Johns

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I, William Hooper, do hereby certify that I have read the foregoing transcript of proceedings taken on the 07/15/14 and the same is true and correct except for the list of corrections noted on the annexed page.

Dated at 1:10 PM EST
this 4 day of August 2014.

William E Hooper
William Hooper

STATE OF FLORIDA
COUNTY OF ST. JOHNS
The foregoing instrument was acknowledged before me on Aug 4, 2014 by William E Hooper
Type of ID produced DL Drivers License
Alexander Orantes
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF FLORIDA
ALEXANDER ORANTES
MY COMMISSION # FF 071521
EXPIRES: November 19, 2017
Bonded Thru Budget Notary Services

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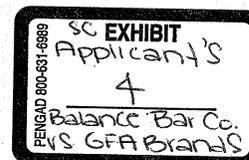
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| Goods and Services | IC 005. US 006 018 044 046 051 052. G & S: vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements |
| Standard Characters Claimed | |
| Mark Drawing Code | (4) STANDARD CHARACTER MARK |
| Serial Number | 77864206 |
| Filing Date | November 3, 2009 |
| Current Basis | 1B |
| Original Filing Basis | 1B |
| Published for Opposition | April 20, 2010 |
| International Registration Number | 1176826 |
| Owner | (APPLICANT) GFA Brands, Inc. CORPORATION DELAWARE 115 West Century Road, Suite 260 Paramus NEW JERSEY 07652 |
| Attorney of Record | Larry H. Tronco |
| Type of Mark | TRADEMARK |
| Register | PRINCIPAL |
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| NAME | GFA Brands, Inc. |
| STREET | Suite 260 |
| CITY | Paramus |
| STATE | New Jersey |
| ZIP/POSTAL CODE | 07652 |
| COUNTRY | US |
| NEW OWNER ADDRESS | |
| STREET | 115 West Century Road, Suite 260 |
| CITY | Paramus |
| STATE | New Jersey |
| ZIP/POSTAL CODE | 07652 |
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MARTA S LEVINE
QUARLES & BRADY LLP
411 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202
414-225-7563
414-278-3763
pbergin@dkattorneys.com

By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney: In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

Newly Appointed Attorney:

Marta S. Levine
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
United States
414 277 5000
414 271 3552
tm-dept@quarles.com

Other Appointed Attorneys:

Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer

GFASB019209

The following is to be used as the correspondence address:

Marta S. Levine
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
United States

414 277 5000
414 271 3552
tm-dept@quarles.com

Original PDF file:

[hw_12145185163-094938802_sigPOA_SmartBrandTrademarksEtAl.pdf](#)

Converted PDF file(s) (1 page)

Signature File1

Signatory's Name: Norman J. Matar

Signatory's Position: Executive Vice President & General Counsel

Serial Number: 77864206

Internet Transmission Date: Mon Feb 07 09:50:45 EST 2011

TEAS Stamp: USPTO/RAA-12.145.185.163-201102070950457

18999-77154180-480b9ed21bfde18ebaf94965d

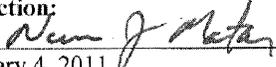
5d3c287f42-N/A-N/A-20110207094938802480

GFASB019210

Revocation of Attorney/Domestic Representative and/or Appointment of
Attorney/Domestic Representative

Handwritten Signature

Signature Section:

Signature:  _____

Date: February 4, 2011

Signatory's Name: Norman J. Matar

Signatory's Position: Executive Vice President & General Counsel

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), include only the signature page (no declaration is required, nor should any other information from the actual revocation be included).

QB\139986.00002\12445918.1

GFASB019211

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, April 20, 2010 00:30 AM
To: pbergin@dkattorneys.com
Subject: Official USPTO Notice of Publication: Serial Number 77864206

NOTICE OF PUBLICATION

Serial Number: 77-864,206
Mark: SMART BALANCE(STANDARD CHARACTER MARK)
International Class(es): 005
Applicant: GFA Brands, Inc.
Attorney Reference Number: 33616.96465

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Apr 20, 2010. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a Statement of Use or Extension Request within six (6) months after the NOA issues.)

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20100420_OG.pdf#page=1
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 77-864,206, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

GFASB019212

Trademark Snap Shot Publication & Issue Review Stylesheet
(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864206 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---------------------------------------|--------------------|-----|
| RUN DATE | 03/16/2010 | | |
| PUB DATE | 04/20/2010 | | |
| STATUS | 681-PUBLICATION/ISSUE REVIEW COMPLETE | | |
| STATUS DATE | 03/15/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPub 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019213

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 West Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 005 |
| DESCRIPTION TEXT | vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 005 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|----|
| CHANGE IN REGISTRATION | NO |
|------------------------|----|

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|--|---------|
| 03/15/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 010 |
| 03/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 009 |
| 02/16/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GNEA | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 006 |
| 02/16/2010 | GNEA | F | EXAMINERS AMENDMENT E-MAILED | 005 |
| 02/16/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |

GFASB019214

11/06/2009

NWAP

I

NEW APPLICATION ENTERED IN TRAM

001

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019215

SMART BALANCE

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864206 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|------------------------------|--------------------|-----|
| RUN DATE | 03/11/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 680-APPROVED FOR PUBLICATION | | |
| STATUS DATE | 03/10/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPUB 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019217

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 West Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 005 |
| DESCRIPTION TEXT | vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 005 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|----|
| CHANGE IN REGISTRATION | NO |
|------------------------|----|

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|--|---------|
| 03/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 009 |
| 02/16/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GNEA | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 006 |
| 02/16/2010 | GNEA | F | EXAMINERS AMENDMENT E-MAILED | 005 |
| 02/16/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

GFASB019218

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

SMART BALANCE

Trademark Snap Shot Amendment & Mail Processing Stylesheet
 (Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864206 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|----------------------------------|--------------------|-----|
| RUN DATE | 02/17/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 647-EXAMINERS AMENDMENT - MAILED | | |
| STATUS DATE | 02/16/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPub 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019221

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 West Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 005 |
| DESCRIPTION TEXT | vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 005 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|----|
| CHANGE IN REGISTRATION | NO |
|------------------------|----|

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|--|---------|
| 02/16/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GREN | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 006 |
| 02/16/2010 | GNEA | F | EXAMINERS AMENDMENT E-MAILED | 005 |
| 02/16/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

GFASB019222

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

SMART BALANCE

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864206 - SMART BALANCE
- 33616.96465
Sent: 2/16/2010 3:32:08 PM
Sent As: ECOM103@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/864206

MARK: SMART BALANCE

77864206

CORRESPONDENT ADDRESS:

PATRICK M. BERGIN
DAVIS & KUELTHAU, S.C.
111 E KILBOURN AVE STE 1400
MILWAUKEE, WI 53202-6613

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: GFA Brands, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:** 33616.96465

CORRESPONDENT E-MAIL ADDRESS:
pbergin@dkattorneys.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 2/16/2010

OFFICE SEARCH: The examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

AMENDMENT: In accordance with the authorization granted by Patrick Bergin on February 16, 2010, the application has been AMENDED as indicated below. Please advise the undersigned examining attorney immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods and/or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

GFASB019225

CLAIM OF PRIOR OWNERSHIP – DO NOT PRINT

Applicant's claim of prior ownership shall not be printed on any subsequent registration that may be issued in this application because the goods in the registrations are unrelated to the goods listed in this application. However, the claim shall remain a part of the application record.

If the applicant has any questions, please telephone the assigned examining attorney.

/V.J./
Gene V.J. Maciol, II
Trademark Attorney Advisor
Law Office 103
571 272 9280
571 273 9280 fax

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

GFASB019226

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864206 - SMART BALANCE
- 33616.96465
Sent: 2/16/2010 3:32:12 PM
Sent As: ECOM103@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 77864206) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 2/16/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864206&doc_type=EXA&)
http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864206&doc_type=EXA&
OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 2/16/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

GFASB019227

*** User:GMACIOL ***

| # | Total Marks | Dead Marks | Live Viewed Docs | Live Viewed Images | Status/ Search Duration | Search |
|----|----------------|---------------|------------------------|--------------------------|-------------------------------|----------------------------|
| 01 | 23994 | N/A | 0 | 0 | 0:01 | *smart*[bi,ti] |
| 02 | 33 | N/A | 0 | 0 | 0:01 | *smrt*[bi,ti] |
| 03 | 36193 | N/A | 0 | 0 | 0:01 | *bal*[bi,ti] |
| 04 | 20799 | N/A | 0 | 0 | 0:04 | *l{v}n{"cxsz"}*[bi,ti] |
| 05 | 3917 | N/A | 0 | 0 | 0:02 | *bal\${v}n{'cxsz'}*[bi,ti] |
| 06 | 33 | 8 | 25 | 20 | 0:01 | (1 2) and ((3 and 4) 5) |

Session started 2/9/2010 10:47:09 AM

Session finished 2/9/2010 10:50:39 AM

Total search duration 0 minutes 10 seconds

Session duration 3 minutes 30 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77864206

GFASB019228

Trademark/Service Mark Application, Principal Register

Serial Number: 77864206

Filing Date: 11/03/2009

The table below presents the data as entered.

| Input Field | Entered |
|---|--|
| SERIAL NUMBER | 77864206 |
| MARK INFORMATION | |
| *MARK | <u>SMART BALANCE</u> |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| LITERAL ELEMENT | SMART BALANCE |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font, style, size, or color. |
| REGISTER | Principal |
| APPLICANT INFORMATION | |
| *OWNER OF MARK | GFA Brands, Inc. |
| INTERNAL ADDRESS | Suite 260 |
| *STREET | 115 West Century Rd. |
| *CITY | Paramus |
| *STATE (Required for U.S. applicants) | New Jersey |
| *COUNTRY | United States |
| *ZIP/POSTAL CODE (Required for U.S. applicants only) | 07652 |
| LEGAL ENTITY INFORMATION | |
| TYPE | corporation |
| STATE/COUNTRY OF INCORPORATION | Delaware |
| GOODS AND/OR SERVICES AND BASIS INFORMATION | |
| INTERNATIONAL CLASS | 005 |

GFASB019229

| | |
|--|--|
| *IDENTIFICATION | vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements |
| FILING BASIS | SECTION 1(b) |
| ADDITIONAL STATEMENTS SECTION | |
| PRIOR REGISTRATION(S) | The applicant claims ownership of U.S. Registration Number(s) 2200663, 2276285, 2952127, and others. |
| ATTORNEY INFORMATION | |
| NAME | Patrick M. Bergin |
| ATTORNEY DOCKET NUMBER | 33616.96465 |
| FIRM NAME | Davis & Kuelthau, s.c. |
| INTERNAL ADDRESS | Suite 1400 |
| STREET | 111 E. Kilbourn Ave. |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 53202 |
| PHONE | 414-225-7563 |
| FAX | 414-278-3763 |
| EMAIL ADDRESS | pbergin@dkattorneys.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| OTHER APPOINTED ATTORNEY | Joseph S. Heino |
| CORRESPONDENCE INFORMATION | |
| NAME | Patrick M. Bergin |
| FIRM NAME | Davis & Kuelthau, s.c. |
| INTERNAL ADDRESS | Suite 1400 |
| STREET | 111 E. Kilbourn Ave. |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 53202 |

GFASB019230

| | |
|--|--|
| PHONE | 414-225-7563 |
| FAX | 414-278-3763 |
| EMAIL ADDRESS | pbergin@dkattorneys.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| FEE INFORMATION | |
| NUMBER OF CLASSES | 1 |
| FEE PER CLASS | 325 |
| *TOTAL FEE DUE | 325 |
| *TOTAL FEE PAID | 325 |
| SIGNATURE INFORMATION | |
| SIGNATURE | /Patrick M. Bergin/ |
| SIGNATORY'S NAME | Patrick M. Bergin |
| SIGNATORY'S POSITION | Attorney of record, Wisconsin bar member |
| DATE SIGNED | 11/03/2009 |

GFASB019231

Trademark/Service Mark Application, Principal Register

Serial Number: 77864206

Filing Date: 11/03/2009

To the Commissioner for Trademarks:

MARK: SMART BALANCE (Standard Characters, see mark)

The literal element of the mark consists of SMART BALANCE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, GFA Brands, Inc., a corporation of Delaware, having an address of
Suite 260,
115 West Century Rd.
Paramus, New Jersey 07652
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 005: vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 2200663, 2276285, 2952127, and others.

The applicant's current Attorney Information:

Patrick M. Bergin and Joseph S. Heino of Davis & Kuelthau, s.c.

Suite 1400
111 E. Kilbourn Ave.
Milwaukee, Wisconsin 53202
United States

The attorney docket/reference number is 33616.96465.

The applicant's current Correspondence Information:

Patrick M. Bergin
Davis & Kuelthau, s.c.
Suite 1400
111 E. Kilbourn Ave.
Milwaukee, Wisconsin 53202

GFASB019232

414-225-7563(phone)
414-278-3763(fax)
pbergin@dkattorneys.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Patrick M. Bergin/ Date Signed: 11/03/2009
Signatory's Name: Patrick M. Bergin
Signatory's Position: Attorney of record, Wisconsin bar member

RAM Sale Number: 3743
RAM Accounting Date: 11/04/2009

Serial Number: 77864206
Internet Transmission Date: Tue Nov 03 17:46:37 EST 2009
TEAS Stamp: USPTO/BAS-64.132.66.164-2009110317463777
2068-77864206-460b03812c08e748a507f19ec7
1137d398-DA-3743-20091103173743579767

GFASB019233

SMART BALANCE

SMART BALANCE

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

Trademark Electronic Search System (TESS)

 **United States Patent and Trademark Office**
Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Jul 11 03:20:56 EDT 2014

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG BOTTOM HELP

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TSDR ASSIGN Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

SMART BALANCE

Word Mark SMART BALANCE
Goods and Services IC 029. US 046. G & S: soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars
IC 030. US 046. G & S: cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77864268
Filing Date November 3, 2009
Current Basis 1B
Original Filing Basis 1B

Published for Opposition August 10, 2010

International Registration Number 1176826

Owner (APPLICANT) GFA Brands, Inc. CORPORATION DELAWARE 115 West Century Road, Suite 260 Paramus NEW JERSEY 07652

Attorney of Record Larry H. Tronco

Prior Registrations 2952127

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE



TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG TOP HELP

| HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY

Change Of Owner's Address

The table below presents the data as entered.

| Input Field | Entered |
|-----------------------------------|--|
| SERIAL NUMBER | 77864268 |
| LAW OFFICE ASSIGNED | LAW OFFICE 103 |
| MARK SECTION | |
| MARK | SMART BALANCE |
| OWNER SECTION (current) | |
| NAME | GFA Brands, Inc. |
| STREET | 115 W. Century Rd. |
| CITY | Paramus |
| STATE | New Jersey |
| ZIP/POSTAL CODE | 07652 |
| COUNTRY | US |
| NEW OWNER ADDRESS | |
| STREET | 115 West Century Road, Suite 260 |
| CITY | Paramus |
| STATE | New Jersey |
| ZIP/POSTAL CODE | 07652 |
| COUNTRY | United States |
| SIGNATURE SECTION | |
| SIGNATURE | /Hillary J. Wucherer/ |
| SIGNATORY NAME | Hillary J. Wucherer |
| SIGNATORY DATE | 03/15/2012 |
| SIGNATORY POSITION | Attorney of Record, Wisconsin Bar Member |
| SIGNATORY PHONE NUMBER | 414.277.5723 |
| FILING INFORMATION SECTION | |

| | |
|--------------------|--|
| SUBMIT DATE | Thu Mar 15 15:38:48 EDT 2012 |
| TEAS STAMP | USPTO/COA-50.58.161.129-2 0120315153848915331-77847 720-4903c105da28f18f2e6de dcf390bf60fba0-N/A-N/A-20 120315151708763644 |

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

| Input Field | Entered |
|--------------------------------------|---|
| SERIAL NUMBER | 77864268 |
| LAW OFFICE ASSIGNED | LAW OFFICE 103 |
| MARK SECTION | |
| MARK | SMART BALANCE |
| ATTORNEY SECTION | |
| ORIGINAL ADDRESS | MARTA S LEVINE QUARLES & BRADY LLP 33616.96460 411 E WISCONSIN AVE SUITE 2040 MILWAUKEE, WI 53202-6613 414-225-7563 414-278-3763 pbergin@dkattorneys.com |
| NEW OTHER APPOINTED ATTORNEYS | Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer |
| NEW ATTORNEY ADDRESS | |
| STATEMENT TEXT | By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney: |
| NAME | Marta S. Levine |
| FIRM NAME | Quarles & Brady LLP |
| STREET | 411 East Wisconsin Avenue |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |
| | |

| | |
|---|---------------------|
| POSTAL/ZIP CODE | 53202 |
| PHONE | 414 277 5000 |
| FAX | 414 271 3552 |
| EMAIL | tm-dept@quarles.com |
| ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL | YES |

NEW CORRESPONDENCE ADDRESS

| | |
|--------------------------------------|---|
| NAME | Marta S. Levine |
| FIRM NAME | Quarles & Brady LLP |
| STREET | 411 East Wisconsin Avenue |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |
| POSTAL/ZIP CODE | 53202 |
| PHONE | 414 277 5000 |
| FAX | 414 271 3552 |
| EMAIL | tm-dept@quarles.com |
| AUTHORIZED TO COMMUNICATE VIA E-MAIL | YES |
| OTHER APPOINTED ATTORNEY | Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer |

SIGNATURE SECTION

| | |
|--------------------------------|--|
| SIGNATORY FILE | |
| ORIGINAL PDF FILE | hw_12145185163-094938802_sigPOA_SmartBrandTrademarksEtAl.pdf |
| CONVERTED PDF FILE(S) (1 page) | \\TICRS\EXPORT1\IMAGEOUT1\778\642\77864268\xml2\RAA0002.JPG |
| SIGNATORY NAME | Norman J. Matar |

GFASB019239

| | |
|-----------------------------------|---|
| SIGNATORY POSITION | Executive Vice President & General Counsel |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Mon Feb 07 09:50:45 EST 2011 |
| TEAS STAMP | USPTO/RAA-12.145.185.163- 20110207095045718999-7715 4180-480b9ed21bfde18ebaf9 4965d5d3c287f42-N/A-N/A-2 0110207094938802480 |

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

To the Commissioner for Trademarks:

MARK: SMART BALANCE

SERIAL NUMBER: 77864268

The original attorney

MARTA S LEVINE

QUARLES & BRADY LLP

33616.96460

411 E WISCONSIN AVE SUITE 2040

MILWAUKEE, WI 53202-6613

414-225-7563

414-278-3763

pbergin@dkattorneys.com

Original Correspondence Address :

MARTA S LEVINE

QUARLES & BRADY LLP

411 E WISCONSIN AVE SUITE 2040

MILWAUKEE, WI 53202-6613

414-225-7563

414-278-3763

pbergin@dkattorneys.com

By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney: In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

Newly Appointed Attorney:

Marta S. Levine

Quarles & Brady LLP

411 East Wisconsin Avenue

Milwaukee, Wisconsin 53202

United States

414 277 5000

414 271 3552

tm-dept@quarles.com

Other Appointed Attorneys:

Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer

GFASB019241

The following is to be used as the correspondence address:

Marta S. Levine
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
United States

414 277 5000
414 271 3552
tm-dept@quarles.com

Original PDF file:

hw 12145185163-094938802 . sigPOA SmartBrandTrademarksEtAl.pdf

Converted PDF file(s) (1 page)

Signature File1

Signatory's Name: Norman J. Matar

Signatory's Position: Executive Vice President & General Counsel

Serial Number: 77864268

Internet Transmission Date: Mon Feb 07 09:50:45 EST 2011

TEAS Stamp: USPTO/RAA-12.145.185.163-201102070950457

18999-77154180-480b9ed21bfde18ebaf94965d

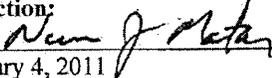
5d3c287f42-N/A-N/A-20110207094938802480

GFASB019242

**Revocation of Attorney/Domestic Representative and/or Appointment of
Attorney/Domestic Representative**

Handwritten Signature

Signature Section:

Signature: 

Date: February 4, 2011

Signatory's Name: Norman J. Matar

Signatory's Position: Executive Vice President & General Counsel

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), include only the signature page (no declaration is required, nor should any other information from the actual revocation be included).

QB\139986.00002\12445918.1

GFASB019243

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, August 10, 2010 00:24 AM
To: pbergin@dkattorneys.com
Subject: Official USPTO Notice of Publication: Serial Number 77864268

NOTICE OF PUBLICATION

Serial Number: 77-864,268
Mark: SMART BALANCE(STANDARD CHARACTER MARK)
International Class(es): 029, 030
Applicant: GFA Brands, Inc.
Attorney Reference Number: 33616.96460

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Aug 10, 2010. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a Statement of Use or Extension Request within six (6) months after the NOA issues.)

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20100810_OG.pdf#page=1
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 77-864,268, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

GFASB019244

Trademark Snap Shot Publication & Issue Review Stylesheet

(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---------------------------------------|--------------------|-----|
| RUN DATE | 07/06/2010 | | |
| PUB DATE | 08/10/2010 | | |
| STATUS | 681-PUBLICATION/ISSUE REVIEW COMPLETE | | |
| STATUS DATE | 07/02/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPub 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019245

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | 115 W. Century Rd. Suite 260 Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|---|---------|
| 07/02/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 022 |

GFASB019246

| | | | | |
|------------|------|---|---|-----|
| 07/02/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 021 |
| 06/05/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 020 |
| 06/02/2010 | GNEN | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 019 |
| 06/02/2010 | GNEA | O | EXAMINERS AMENDMENT E-MAILED | 018 |
| 06/02/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 017 |
| 06/01/2010 | ZZZX | Z | PREVIOUS ALLOWANCE COUNT WITHDRAWN | 016 |
| 05/28/2010 | PBCR | Z | WITHDRAWN FROM PUB - OG REVIEW QUERY | 015 |
| 05/18/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 014 |
| 05/18/2010 | ALIE | A | ASSIGNED TO LIE | 013 |
| 05/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 012 |
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019247

SMART BALANCE

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---------------------------------------|--------------------|-----|
| RUN DATE | 07/06/2010 | | |
| PUB DATE | 08/10/2010 | | |
| STATUS | 681-PUBLICATION/ISSUE REVIEW COMPLETE | | |
| STATUS DATE | 07/02/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPUB 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019249

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | 115 W. Century Rd. Suite 260 Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|---|---------|
| 07/02/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 022 |

GFASB019250

| | | | | |
|------------|------|---|---|-----|
| 07/02/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 021 |
| 06/05/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 020 |
| 06/02/2010 | GNEA | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 019 |
| 06/02/2010 | GNEA | O | EXAMINERS AMENDMENT E-MAILED | 018 |
| 06/02/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 017 |
| 06/01/2010 | ZZZX | Z | PREVIOUS ALLOWANCE COUNT WITHDRAWN | 016 |
| 05/28/2010 | PBCR | Z | WITHDRAWN FROM PUB - OG REVIEW QUERY | 015 |
| 05/18/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 014 |
| 05/18/2010 | ALIE | A | ASSIGNED TO LIE | 013 |
| 05/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 012 |
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019251

SMART BALANCE

Trademark Snap Shot Amendment & Mail Processing Stylesheet
 (Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|----------------------------------|--------------------|-----|
| RUN DATE | 06/08/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 647-EXAMINERS AMENDMENT - MAILED | | |
| STATUS DATE | 06/02/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPUB 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019253

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | 115 W. Century Rd. Suite 260 Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars; pita chips |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|------------------------------|---------|
| 06/05/2010 | XAEC | I | EXAMINER'S AMENDMENT ENTERED | 020 |

GFASB019254

| | | | | |
|------------|------|---|---|-----|
| 06/02/2010 | GNEN | O | NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED | 019 |
| 06/02/2010 | GNEA | O | EXAMINERS AMENDMENT E-MAILED | 018 |
| 06/02/2010 | CNEA | R | EXAMINERS AMENDMENT -WRITTEN | 017 |
| 06/01/2010 | ZZZX | Z | PREVIOUS ALLOWANCE COUNT WITHDRAWN | 016 |
| 05/28/2010 | PBCR | Z | WITHDRAWN FROM PUB - OG REVIEW QUERY | 015 |
| 05/18/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 014 |
| 05/18/2010 | ALIE | A | ASSIGNED TO LIE | 013 |
| 05/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 012 |
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019255

SMART BALANCE

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864268 - SMART BALANCE
- 33616.96460
Sent: 6/2/2010 10:53:57 AM
Sent As: ECOM103@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77864268

MARK: SMART BALANCE

77864268

CORRESPONDENT ADDRESS:

PATRICK M. BERGIN
DAVIS & KUELTHAU, S.C.
111 E KILBOURN AVE STE 1400
MILWAUKEE, WI 53202-6613

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: GFA Brands, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:** 33616.96460

CORRESPONDENT E-MAIL ADDRESS:
pbergin@dkattorneys.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 6/2/2010

AMENDMENT: In accordance with the authorization granted by *In re Tee&Pak, Inc.* 164 USPQ 88 (TTAB 1969), *Groening v. Missouri Botanical Garden*, 59 USPQ2d 1601 (ComrPats 1999) and TMEP §707.02, the application has been AMENDED as indicated below.

CLASSIFICATION OF GOODS

International class 29 - soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars.

International class 30 - cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or

GFASB019257

popped popcorn, spices, granola-based snack bars; **pita chips**.

NOTE: The above amendment moves "pita chips" from international class 29, to international class 30. No other changes have been made.

With this Examiner's Amendment all refusals and/or requirements have been satisfied and/or withdrawn. If the applicant has any questions, please telephone the assigned examining attorney.

/V.J./
Gene V.J. Maciol, II
Trademark Attorney Advisor
Law Office 103
571 272 9280
571 273 9280 fax

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

GFASB019258

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864268 - SMART BALANCE
- 33616.96460
Sent: 6/2/2010 10:54:03 AM
Sent As: ECOM103@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 77864268) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 6/2/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864268&doc_type=EXA&1)
http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864268&doc_type=EXA&1
OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 6/2/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

GFASB019259

Trademark Snap Shot Publication & Issue Review Stylesheet
 (Table presents the data on Publication & Issue Review Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---------------------------------------|--------------------|-----|
| RUN DATE | 05/19/2010 | | |
| PUB DATE | 06/22/2010 | | |
| STATUS | 681-PUBLICATION/ISSUE REVIEW COMPLETE | | |
| STATUS DATE | 05/18/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPUB 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019260

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | 115 W. Century Rd. Suite 260 Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | pita chips, soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|---|---------|
| 05/18/2010 | PREV | O | LAW OFFICE PUBLICATION REVIEW COMPLETED | 014 |

GFASB019261

| | | | | |
|------------|------|---|---|-----|
| 05/18/2010 | ALIE | A | ASSIGNED TO LIE | 013 |
| 05/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 012 |
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019262

SMART BALANCE

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|------------------------------|--------------------|-----|
| RUN DATE | 05/11/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 680-APPROVED FOR PUBLICATION | | |
| STATUS DATE | 05/10/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPUB 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019264

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 W. Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | pita chips, soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|---------------------------------------|---------|
| 05/10/2010 | CNSA | P | APPROVED FOR PUB - PRINCIPAL REGISTER | 012 |

| | | | | |
|------------|------|---|---|-----|
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019266

SMART BALANCE

Trademark Snap Shot Amendment & Mail Processing Stylesheet
 (Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---|--------------------|-----|
| RUN DATE | 04/17/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED | | |
| STATUS DATE | 04/16/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPub 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 W. Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION TEXT | pita chips, soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 029 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|-----------------------------------|---------|
| 04/16/2010 | TEME | I | TEAS/EMAIL CORRESPONDENCE ENTERED | 011 |

GFASB019269

| | | | | |
|------------|------|---|---|-----|
| 04/16/2010 | CRFA | I | CORRESPONDENCE RECEIVED IN LAW OFFICE | 010 |
| 04/16/2010 | TROA | I | TEAS RESPONSE TO OFFICE ACTION RECEIVED | 009 |
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | 002 |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

GFASB019270

SMART BALANCE

Response to Office Action

The table below presents the data as entered.

| Input Field | Entered |
|--|----------------|
| SERIAL NUMBER | 77864268 |
| LAW OFFICE ASSIGNED | LAW OFFICE 103 |
| MARK SECTION (no change) | |
| GOODS AND/OR SERVICES SECTION (030)(current) | |
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION | |
| cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars | |
| FILING BASIS | Section 1(b) |
| GOODS AND/OR SERVICES SECTION (030)(proposed) | |
| INTERNATIONAL CLASS | 030 |
| TRACKED TEXT DESCRIPTION | |
| cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars; <u>cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars</u> | |
| FINAL DESCRIPTION | |
| cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars | |
| FILING BASIS | Section 1(b) |
| GOODS AND/OR SERVICES SECTION (029)(class added) | |
| INTERNATIONAL CLASS | 029 |
| DESCRIPTION | |
| pita chips, soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars | |
| FILING BASIS | Section 1(b) |

GFASB019272

| PAYMENT SECTION | |
|----------------------------|---|
| NUMBER OF CLASSES | 1 |
| FEE PER CLASS | 325 |
| TOTAL FEES DUE | 325 |
| SIGNATURE SECTION | |
| DECLARATION SIGNATURE | /Patrick M. Bergin/ |
| SIGNATORY'S NAME | Patrick M. Bergin |
| SIGNATORY'S POSITION | Attorney of record, Wisconsin bar member |
| DATE SIGNED | 04/16/2010 |
| RESPONSE SIGNATURE | /Patrick M. Bergin/ |
| SIGNATORY'S NAME | Patrick M. Bergin |
| SIGNATORY'S POSITION | Attorney of record, Wisconsin bar member |
| DATE SIGNED | 04/16/2010 |
| AUTHORIZED SIGNATORY | YES |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Fri Apr 16 14:54:50 EDT 2010 |
| TEAS STAMP | USPTO/ROA-64.132.66.164-2 0100416145450232504-77864 268-46048342c56db229e886f 2484b719d3f85-DA-1120-201 00416145009817751 |

PTO Form 1057 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77864268** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 030 for cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars

Original Filing Basis:

GFASB019273

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: ~~cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars;~~ cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars

Class 030 for cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of crackers, pretzels, nuts and/or popped popcorn, spices, granola-based snack bars

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Applicant hereby adds the following class of goods/services to the application:

New: Class 029 for pita chips, soy chips and yucca chips; snack mixes consisting primarily of processed fruits, processed nuts, raisins and/or seeds; nut and seed-based snack bars

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

FEE(S)

Fee(s) in the amount of \$325 is being submitted.

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 244. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this

GFASB019274

submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Patrick M. Bergin/ Date: 04/16/2010
Signatory's Name: Patrick M. Bergin
Signatory's Position: Attorney of record, Wisconsin bar member

Response Signature

Signature: /Patrick M. Bergin/ Date: 04/16/2010
Signatory's Name: Patrick M. Bergin
Signatory's Position: Attorney of record, Wisconsin bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 1120
RAM Accounting Date: 04/19/2010

Serial Number: 77864268
Internet Transmission Date: Fri Apr 16 14:54:50 EDT 2010
TEAS Stamp: USPTO/ROA-64.132.66.164-2010041614545023
2504-77864268-46048342c56db229e886f2484b
719d3f85-DA-1120-20100416145009817751

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RAM SALE NUMBER: 1120
RAM ACCOUNTING DATE: 20100419

INTERNET TRANSMISSION DATE:

2010/04/16

SERIAL NUMBER:

77/864268

| Description | Fee Code | Transaction Date | Fee | Number Of Classes | Total Fees Paid |
|-------------|----------|------------------|-----|-------------------|-----------------|
| New App | 7001 | 2010/04/16 | 325 | 1 | 325 |

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Trademark Snap Shot Amendment & Mail Processing Stylesheet
(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

| | | | |
|---------------|------------------|---------------|------------|
| SERIAL NUMBER | 77864268 | FILING DATE | 11/03/2009 |
| REG NUMBER | 0000000 | REG DATE | N/A |
| REGISTER | PRINCIPAL | MARK TYPE | TRADEMARK |
| INTL REG # | N/A | INTL REG DATE | N/A |
| TM ATTORNEY | MACIOL, GENE V J | L.O. ASSIGNED | 103 |

PUB INFORMATION

| | | | |
|----------------------|---|--------------------|-----|
| RUN DATE | 02/18/2010 | | |
| PUB DATE | N/A | | |
| STATUS | 656-EXAMINER'S AMENDMENT/PRIORITY ACTION MAILED | | |
| STATUS DATE | 02/16/2010 | | |
| LITERAL MARK ELEMENT | SMART BALANCE | | |
| DATE ABANDONED | N/A | DATE CANCELLED | N/A |
| SECTION 2F | NO | SECTION 2F IN PART | NO |
| SECTION 8 | NO | SECTION 8 IN PART | NO |
| SECTION 15 | NO | REPub 12C | N/A |
| RENEWAL FILED | NO | RENEWAL DATE | N/A |
| DATE AMEND REG | N/A | | |

FILING BASIS

| FILED BASIS | | CURRENT BASIS | | AMENDED BASIS | |
|-------------|-----|---------------|-----|---------------|----|
| 1 (a) | NO | 1 (a) | NO | 1 (a) | NO |
| 1 (b) | YES | 1 (b) | YES | 1 (b) | NO |
| 44D | NO | 44D | NO | 44D | NO |
| 44E | NO | 44E | NO | 44E | NO |
| 66A | NO | 66A | NO | | |
| NO BASIS | NO | NO BASIS | NO | | |

MARK DATA

| | |
|-------------------------|---------------|
| STANDARD CHARACTER MARK | YES |
| LITERAL MARK ELEMENT | SMART BALANCE |

GFASB019277

| | |
|--------------------|---------------------------|
| MARK DRAWING CODE | 4-STANDARD CHARACTER MARK |
| COLOR DRAWING FLAG | NO |

CURRENT OWNER INFORMATION

| | |
|-------------|--|
| PARTY TYPE | 10-ORIGINAL APPLICANT |
| NAME | GFA Brands, Inc. |
| ADDRESS | Suite 260 115 W. Century Rd. Paramus, NJ 07652 |
| ENTITY | 03-CORPORATION |
| CITIZENSHIP | Delaware |

GOODS AND SERVICES

| | |
|---------------------|--|
| INTERNATIONAL CLASS | 030 |
| DESCRIPTION TEXT | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars |

GOODS AND SERVICES CLASSIFICATION

| | | | | | | | |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|
| INTERNATIONAL CLASS | 030 | FIRST USE DATE | NONE | FIRST USE IN COMMERCE DATE | NONE | CLASS STATUS | 6-ACTIVE |
|---------------------|-----|----------------|------|----------------------------|------|--------------|----------|

MISCELLANEOUS INFORMATION/STATEMENTS

| | |
|------------------------|---------|
| CHANGE IN REGISTRATION | NO |
| OWNER OF US REG NOS | 2952127 |

PROSECUTION HISTORY

| DATE | ENT CD | ENT TYPE | DESCRIPTION | ENT NUM |
|------------|--------|----------|---|---------|
| 02/17/2010 | CEPE | I | COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED | 008 |
| 02/16/2010 | ALIE | A | ASSIGNED TO LIE | 007 |
| 02/16/2010 | GEAN | O | NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 006 |
| 02/16/2010 | GEAP | F | EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED | 005 |
| 02/16/2010 | CPEA | R | EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED | 004 |
| 02/08/2010 | DOCK | D | ASSIGNED TO EXAMINER | 003 |
| 11/10/2009 | NWOS | I | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED | 002 |

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| | | | | |
|------------|------|---|---------------------------------|-----|
| | | | IN TRAM | |
| 11/06/2009 | NWAP | I | NEW APPLICATION ENTERED IN TRAM | 001 |

CURRENT CORRESPONDENCE INFORMATION

| | |
|-------------------------|--|
| ATTORNEY | Patrick M. Bergin |
| CORRESPONDENCE ADDRESS | PATRICK M. BERGIN DAVIS & KUELTHAU, S.C. 111 E KILBOURN AVE STE 1400 MILWAUKEE, WI 53202-6613 |
| DOMESTIC REPRESENTATIVE | NONE |

SMART BALANCE

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864268 - SMART BALANCE
- 33616.96460
Sent: 2/16/2010 3:38:24 PM
Sent As: ECOM103@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/864268

MARK: SMART BALANCE

77864268

CORRESPONDENT ADDRESS:

PATRICK M. BERGIN
DAVIS & KUELTHAU, S.C.
111 E KILBOURN AVE STE 1400
MILWAUKEE, WI 53202-6613

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: GFA Brands, Inc.

CORRESPONDENT'S

REFERENCE/DOCKET NO:

33616.96460

CORRESPONDENT E-MAIL ADDRESS:

pbergin@dkattorneys.com

EXAMINER'S AMENDMENT/PRIORITY ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 2/16/2010

EXAMINER'S AMENDMENT

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02.

AMENDMENT: In accordance with the authorization granted by Patrick Bergin on February 16, 2010,

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the application has been AMENDED as indicated below. Please advise the undersigned immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. 2.71(a); TMEP section 1402.07(e).

CLAIM OF PRIOR OWNERSHIP – CORRECTION

Applicant is owner of U.S. Registration No. 2952127 and others.

Note: Applicant's claim of unrelated U.S. Registration Nos. 2200663 and 2276285 shall remain a part of the application record.

PRIORITY ACTION

The following issues were discussed with the person listed above.

IDENTIFICATION OF GOODS

The identification of goods is unacceptable because it is indefinite. See TMEP §1402.01.

In particular, Applicant must identify the type of "chips", and primary ingredients in the "snack mixes" and "snack bars." As stated, more than one international class may be implicated.

For Applicant's convenience, all indefinite terms and phrases, including suggestions by the examining attorney, have been highlighted.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>. See TMEP §1402.04.

Applicant may adopt one of the following identification of goods, if accurate:

International class 29 – **pita chips, soy chips and yucca chips; snack mixes consisting primarily of [indicate principal ingredients, e.g. processed fruits, processed nuts and/or raisons]; snack mixes consisting primarily of [indicate principal ingredients, e.g. dehydrated fruit and processed nuts]; nut and seed-based snack bars.**

Or

International class 30 - **cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, corn chips, snack mixes consisting primarily of [indicate principal ingredients, e.g. crackers, pretzels, candied nuts and/or popped popcorn], spices, granola-based snack bars.**

Although identifications of goods may be amended to clarify or limit the goods, adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07.

Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

MULTIPLE CLASS APPLICATION

GFASB019282

Applicant may choose to adopt more than one identification listed above and proceed as a multi-class application.

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods based on an intent to use the mark under Trademark Act Section 1(b):

- (1) Applicant must list the goods and/or services by international class; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>).

See 15 U.S.C. §§1051(b), 1112, 1126(e); 37 C.F.R. §§2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

FEE INFORMATION

The filing fee for adding classes to an application is as follows:

- (1) \$325 per class, when the fees are submitted with a response filed online via the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>;
or
- (2) \$375 per class, when the fees are submitted with a paper response.

37 C.F.R. §2.6(a)(1)(i)-(a)(1)(ii); TMEP §§810, 1403.02(c).

RESPONSE GUIDELINES

There is no required format or form for responding to an Office action; however, applicant must explicitly address each refusal and/or requirement raised in this Office action. If a refusal has issued, applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. To respond to requirements, applicant should set forth in writing the required changes or statements and request that the Office enter them into the application record.

The response must be signed by the individual applicant or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). *See* 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §§611.03(b), 611.06 *et seq.*, 712.01. In the case of joint applicants, all must sign. 37 C.F.R. §2.193(e)(2)(ii); TMEP §611.06(a). In addition, the proper signatory must personally sign or personally enter his/her electronic signature. *See* 37 C.F.R. §2.193(a), (e)(2)(ii); TMEP §§611.01(b), 611.02.

The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. If applicant responds on paper via regular mail, the response should include the title "Response to Office Action" and the following information: (1) the name and law office number of the examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/V.J./
Gene V.J. Maciol, II
Trademark Attorney Advisor
Law Office 103
571 272 9280
571 273 9280 fax

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/tcas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

GFASB019284

To: GFA Brands, Inc. (pbergin@dkattorneys.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77864268 - SMART BALANCE
- 33616.96460
Sent: 2/16/2010 3:38:27 PM
Sent As: ECOM103@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 77864268) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 2/16/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864268&doc_type=EAP&...)
[http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864268&doc_type=EAP&r](http://tportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77864268&doc_type=EAP&...)
OR go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 2/16/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) **Response to Office Action form**. If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

GFASB019285

*** User:GMACIOL ***

| # | Total Marks | Dead Marks | Live Viewed Docs | Live Viewed Images | Status/ Search Duration | Search |
|----|----------------|---------------|------------------------|--------------------------|-------------------------------|----------------------------|
| 01 | 23994 | N/A | 0 | 0 | 0:01 | *smart*[bi,ti] |
| 02 | 33 | N/A | 0 | 0 | 0:01 | *smrt*[bi,ti] |
| 03 | 36193 | N/A | 0 | 0 | 0:01 | *bal*[bi,ti] |
| 04 | 20799 | N/A | 0 | 0 | 0:04 | *l{v}n{"cxsz"}*[bi,ti] |
| 05 | 3917 | N/A | 0 | 0 | 0:02 | *bal\${v}n{'cxsz'}*[bi,ti] |
| 06 | 33 | 8 | 25 | 20 | 0:01 | (1 2) and ((3 and 4) 5) |

Session started 2/9/2010 10:47:09 AM

Session finished 2/9/2010 10:51:13 AM

Total search duration 0 minutes 10 seconds

Session duration 4 minutes 4 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 77864268

GFASB019286

Trademark/Service Mark Application, Principal Register

Serial Number: 77864268

Filing Date: 11/03/2009

The table below presents the data as entered.

| Input Field | Entered |
|---|--|
| SERIAL NUMBER | 77864268 |
| MARK INFORMATION | |
| *MARK | <u>SMART BALANCE</u> |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| LITERAL ELEMENT | SMART BALANCE |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font, style, size, or color. |
| REGISTER | Principal |
| APPLICANT INFORMATION | |
| *OWNER OF MARK | GFA Brands, Inc. |
| INTERNAL ADDRESS | Suite 260 |
| *STREET | 115 W. Century Rd. |
| *CITY | Paramus |
| *STATE (Required for U.S. applicants) | New Jersey |
| *COUNTRY | United States |
| *ZIP/POSTAL CODE (Required for U.S. applicants only) | 07652 |
| LEGAL ENTITY INFORMATION | |
| TYPE | corporation |
| STATE/COUNTRY OF INCORPORATION | Delaware |
| GOODS AND/OR SERVICES AND BASIS INFORMATION | |
| INTERNATIONAL CLASS | 030 |

GFASB019287

| | |
|--|--|
| *IDENTIFICATION | cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars |
| FILING BASIS | SECTION 1(b) |
| ADDITIONAL STATEMENTS SECTION | |
| PRIOR REGISTRATION(S) | The applicant claims ownership of U.S. Registration Number(s) 2200663, 2276285, 2952127, and others. |
| ATTORNEY INFORMATION | |
| NAME | Patrick M. Bergin |
| ATTORNEY DOCKET NUMBER | 33616.96460 |
| FIRM NAME | Davis & Kuelthau, s.c. |
| INTERNAL ADDRESS | Suite 1400 |
| STREET | 111 E. Kilbourn Ave. |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 53202 |
| PHONE | 414-225-7563 |
| FAX | 414-278-3763 |
| EMAIL ADDRESS | pbergin@dkattorneys.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| OTHER APPOINTED ATTORNEY | Joseph S. Heino |
| CORRESPONDENCE INFORMATION | |
| NAME | Patrick M. Bergin |
| FIRM NAME | Davis & Kuelthau, s.c. |
| INTERNAL ADDRESS | Suite 1400 |
| STREET | 111 E. Kilbourn Ave. |
| CITY | Milwaukee |
| STATE | Wisconsin |
| COUNTRY | United States |

GFASB019288

| | |
|--|--|
| ZIP/POSTAL CODE | 53202 |
| PHONE | 414-225-7563 |
| FAX | 414-278-3763 |
| EMAIL ADDRESS | pbergin@dkattorneys.com |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| FEE INFORMATION | |
| NUMBER OF CLASSES | 1 |
| FEE PER CLASS | 325 |
| *TOTAL FEE DUE | 325 |
| *TOTAL FEE PAID | 325 |
| SIGNATURE INFORMATION | |
| SIGNATURE | /Patrick M. Bergin/ |
| SIGNATORY'S NAME | Patrick M. Bergin |
| SIGNATORY'S POSITION | Attorney of record, Wisconsin bar member |
| DATE SIGNED | 11/03/2009 |

Trademark/Service Mark Application, Principal Register

Serial Number: 77864268

Filing Date: 11/03/2009

To the Commissioner for Trademarks:

MARK: SMART BALANCE (Standard Characters, see mark)

The literal element of the mark consists of SMART BALANCE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, GFA Brands, Inc., a corporation of Delaware, having an address of
Suite 260,
115 W. Century Rd.
Paramus, New Jersey 07652
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 030: cake mix, frosting, cakes, frozen cakes, cookies, coffee, tea, hot chocolate, bread, rolls, crackers, pretzels, chips, snack mixes, spices, snack bars
Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 2200663, 2276285, 2952127, and others.

The applicant's current Attorney Information:

Patrick M. Bergin and Joseph S. Heino of Davis & Kuelthau, s.c.

Suite 1400
111 E. Kilbourn Ave.
Milwaukee, Wisconsin 53202
United States

The attorney docket/reference number is 33616.96460.

The applicant's current Correspondence Information:

Patrick M. Bergin
Davis & Kuelthau, s.c.
Suite 1400
111 E. Kilbourn Ave.
Milwaukee, Wisconsin 53202

GFASB019290

414-225-7563(phone)

414-278-3763(fax)

pbergin@dkattorneys.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Patrick M. Bergin/ Date Signed: 11/03/2009

Signatory's Name: Patrick M. Bergin

Signatory's Position: Attorney of record, Wisconsin bar member

RAM Sale Number: 4732

RAM Accounting Date: 11/04/2009

Serial Number: 77864268

Internet Transmission Date: Tue Nov 03 18:41:17 EST 2009

TEAS Stamp: USPTO/BAS-64.132.66.164-2009110318411708

3450-77864268-4604226d44f0ddee14d99777c8

b65fbec-DA-4732-20091103183049093932

GFASB019291

SMART BALANCE

SMART BALANCE

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 2,200,663

United States Patent and Trademark Office Registered Oct. 27, 1998

**TRADEMARK
PRINCIPAL REGISTER**

SMART BALANCE

GFA BRANDS, INC. (OHIO CORPORATION)
211 KNICKERBOCKER ROAD
P.O. BOX 397
CRESSKILL, NJ 076260397

FOR: BUTTER SUBSTITUTES, CHEESE,
LOWFAT AND NONFAT CHEESE SUBSTI-
TUTES, MARGARINE, LOWFAT AND
NONFAT MARGARINE SUBSTITUTES,
SHORTENING, LOWFAT AND NONFAT

SHORTENING, SNACK FOOD DIPS AND VEG-
ETABLE OILS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 10-0-1996; IN COMMERCE
10-0-1996.

SN 75-977,525, FILED 7-1-1996.

MONTIA O. GIVENS, EXAMINING ATTOR-
NEY



Owner Name: GFA BRANDS, INC.
Owner Address: 115 West Century Road
Suite 260
Paramus, NEW JERSEY 07652
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Larry H. Tronco
Attorney Primary Email docket@hollandhart.com
Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Larry H. Tronco
Holland & Hart LLP
P.O. Box 8749
Attn: Trademark Docketing
Denver, COLORADO 80201
UNITED STATES

Phone: (303) 473-2873

Fax: (303) 473-2720

Correspondent e-mail: docket@hollandhart.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|---|-------------------|
| May 21, 2014 | ATTORNEY REVOKED AND/OR APPOINTED | |
| May 21, 2014 | TEAS' REVOKE/APPOINT ATTORNEY RECEIVED | |
| Nov. 15, 2013 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Nov. 15, 2013 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jul. 17, 2013 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 19, 2013 | TEAS CHANGE OF CORRESPONDENCE RECEIVED | |
| Mar. 15, 2012 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Mar. 15, 2012 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Nov. 18, 2009 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Nov. 11, 2009 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| May 09, 2009 | REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS) | 69471 |
| May 09, 2009 | REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED | |
| Apr. 27, 2009 | ASSIGNED TO PARALEGAL | 69471 |
| Apr. 24, 2009 | TEAS SECTION 8 & 9 RECEIVED | |
| Nov. 07, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Aug. 02, 2007 | CASE FILE IN TICRS | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| May 23, 2007 | AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP | |
| Jan. 07, 2004 | REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. | |
| Oct. 29, 2003 | REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED | |
| Oct. 29, 2003 | TEAS SECTION 8 & 15 RECEIVED | |
| Oct. 27, 1998 | REGISTERED-PRINCIPAL REGISTER | |
| Aug. 27, 1998 | ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED | |
| Jul. 29, 1998 | STATEMENT OF USE PROCESSING COMPLETE | |
| Jun. 26, 1998 | EXTENSION 1 GRANTED | |

May 07, 1998 USE AMENDMENT FILED
 May 07, 1998 EXTENSION 1 FILED
 Jun. 27, 1998 DIVISIONAL PROCESSING COMPLETE
 Dec. 09, 1997 NOA MAILED - SOU REQUIRED FROM APPLICANT
 Sep. 16, 1997 PUBLISHED FOR OPPOSITION
 Aug. 15, 1997 NOTICE OF PUBLICATION
 Jul. 16, 1997 APPROVED FOR PUB - PRINCIPAL REGISTER
 Jun. 18, 1997 CORRESPONDENCE RECEIVED IN LAW OFFICE
 Jan. 21, 1997 NON-FINAL ACTION MAILED
 Jan. 15, 1997 ASSIGNED TO EXAMINER 73343
 Jan. 13, 1997 ASSIGNED TO EXAMINER 70722

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted
 Affidavit of Incontestability: Section 15 - Accepted
 Renewal Date: Oct. 27, 2008

TM Staff and Location Information

TM Staff Information - None
 File Location

Current Location: POST REGISTRATION

Date in Location: May 09, 2009

Assignment Abstract Of Title Information

Summary

Total Assignments: 13

Registrant: GFA Brands, Inc.

Assignment 1 of 13

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 2825/0874

Pages: 6

Date Recorded: Apr. 02, 2004

Supporting Documents: [assignment-tm-2825-0874.pdf](#)

Assignor

Name: GFA BRANDS, INC.

Execution Date: Mar. 31, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: OHIO

Assignee

Name: GFA BRANDS, INC.

State or Country Where Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: 600 MONTGOMERY STREET
 C/O TSG4 L.P., SUITE 2900
 SAN FRANCISCO, CALIFORNIA 94111

Correspondent

Correspondent Name: ROPES & GRAY LLP

Correspondent Address: ERIN A.DUGAN, IP PARALEGAL
 ONE INTERNATIONAL PLACE
 BOSTON, MA 02110

Domestic Representative - Not Found

Assignment 2 of 13

Conveyance: SECURITY AGREEMENT

Reel/Frame: 2952/0167

Pages: 35

Date Recorded: Apr. 08, 2004

Supporting Documents: [assignment-tm-2952-0167.pdf](#)

Assignor

Name: GFA BRANDS, INC.

Execution Date: Mar. 31, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: UNION BANK OF CALIFORNIA, N.A., AS ADMINISTRATIVE AGENT FOR THE LENDERS

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where Organized: No Place Where Organized Found

Address: 445 SOUTH FIGUEROA STREET, 13TH STREET
ATTN: GARY KIRSHNER
LOS ANGELES, CALIFORNIA 90071

Correspondent

Correspondent Name: PILLSBURY WINTHROP LLP

Correspondent Address: REX D. FRAZIER, ESQ.
725 SOUTH FIGUEROA STREET, SUITE 2800
LOS ANGELES, CALIFORNIA 90017-5406

Domestic Representative - Not Found

Assignment 3 of 13

Conveyance: CHANGE OF ADDRESS

Reel/Frame: 2926/0149

Pages: 3

Date Recorded: Aug. 10, 2004

Supporting Documents: assignment-tm-2926-0149.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Aug. 10, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 211 KNICKERBOCKER ROAD
CRESSKILL, NEW JERSEY 07626

Correspondent

Correspondent Name: ROPES & GRAY LLP

Correspondent Address: JACOB E. COMER, ESQ.
ONE INTERNATIONAL PLACE
BOSTON, MA 02110

Domestic Representative - Not Found

Assignment 4 of 13

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 3544/0352

Pages: 5

Date Recorded: May 15, 2007

Supporting Documents: assignment-tm-3544-0352.pdf

Assignor

Name: UNION BANK OF CALIFORNIA N.A.

Execution Date: May 14, 2007

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: P.O. BOX 397 211 KNICKERBOCKER ROAD
CRESSKILL, NEW JERSEY 07626

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 EAST KILBOURN AVENUE
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 5 of 13

Conveyance: FIRST LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 3652/0879

Pages: 12

Date Recorded: Nov. 01, 2007

Supporting Documents: [assignment-tm-3652-0879.pdf](#)

Name: BSB ACQUISITION CO., INC.
Legal Entity Type: CORPORATION

Name: BOULDER SPECIALTY BRANDS, INC.
Legal Entity Type: CORPORATION

Name: BANK OF AMERICA, N.A.
Legal Entity Type: NATIONAL ASSOCIATION

Address: 1455 MARKET ST.
5TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103

Correspondent Name: SUSAN REISS

Correspondent Address: 599 LEXINGTON AVENUE
SHEARMAN & STERLING LLP
NEW YORK, NY 10022

Assignor

Execution Date: May 21, 2007

State or Country Where Organized: No Place Where Organized Found

Execution Date: May 21, 2007

State or Country Where Organized: No Place Where Organized Found

Assignee

State or Country Where Organized: No Place Where Organized Found

Correspondent

Domestic Representative - Not Found

Assignment 6 of 13

Conveyance: SECOND LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 3652/0891

Pages: 12

Date Recorded: Nov. 01, 2007

Supporting Documents: [assignment-tm-3652-0891.pdf](#)

Name: BSB ACQUISITION CO., INC.
Legal Entity Type: CORPORATION

Name: BOULDER SPECIALTY BRANDS, INC.
Legal Entity Type: CORPORATION

Name: BANK OF AMERICA, N.A.
Legal Entity Type: NATIONAL ASSOCIATION

Address: 1455 MARKET ST.
5TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103

Correspondent Name: SUSAN REISS

Correspondent Address: 599 LEXINGTON AVENUE
SHEARMAN & STERLING LLP
NEW YORK, NY 10022

Assignor

Execution Date: May 21, 2007

State or Country Where Organized: No Place Where Organized Found

Execution Date: May 21, 2007

State or Country Where Organized: No Place Where Organized Found

Assignee

State or Country Where Organized: No Place Where Organized Found

Correspondent

Domestic Representative - Not Found

Assignment 7 of 13

Conveyance: RELEASE OF FIRST LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 4090/0972

Pages: 11

Date Recorded: Nov. 04, 2009

Supporting Documents: [assignment-tm-4090-0972.pdf](#)

Name: BANK OF AMERICA, N.A.
Legal Entity Type: CORPORATION

Name: BSB ACQUISITION CO., INC.
Legal Entity Type: CORPORATION

Address: 115 W. CENTURY RD.
SUITE 260

Assignor

Execution Date: Nov. 04, 2009

State or Country Where Organized: No Place Where Organized Found

Assignee

State or Country Where Organized: DELAWARE

PARAMUS, NEW JERSEY 07652

Name: BOULDER SPECIALTY BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 E. KILBOURN AVE.
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 8 of 13

Conveyance: RELEASE OF SECOND LIEN SECURITY INTEREST

Reel/Frame: 4090/0983

Pages: 11

Date Recorded: Nov. 04, 2009

Supporting Documents: assignment-tm-4090-0983.pdf

Assignor

Name: BANK OF AMERICA, N.A.

Execution Date: Nov. 04, 2009

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: BSB ACQUISITION CO., INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 W. CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Name: BOULDER SPECIALTY BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 W. CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 E. KILBOURN AVE.
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 9 of 13

Conveyance: SECURITY INTEREST

Reel/Frame: 4091/0319

Pages: 10

Date Recorded: Nov. 05, 2009

Supporting Documents: assignment-tm-4091-0319.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Nov. 04, 2009

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT

Legal Entity Type: CHARTERED BANK

State or Country Where Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 10 of 13

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 4812/0734

Pages: 7

Date Recorded: Jul. 02, 2012

Supporting Documents: assignment-tm-4812-0734.pdf

Assignor

Name: BANK OF MONTREAL

Execution Date: Jul. 02, 2012

Legal Entity Type: CANADIAN CHARTERED BANK

State or Country Where Organized: CANADA

Assignee

Name: GFA BRANDS, INC.

State or Country Where Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: JASON L. GREENBERG

Correspondent Address: ONE NEW YORK PLAZA
FRIED FRANK LLP
NEW YORK, NY 10004-1980

Domestic Representative - Not Found

Assignment 11 of 13

Conveyance: SECURITY INTEREST

Reel/Frame: 4813/0493

Pages: 9

Date Recorded: Jul. 02, 2012

Supporting Documents: assignment-tm-4813-0493.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Jul. 02, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT

State or Country Where Organized: CANADA

Legal Entity Type: CHARTERED BANK

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 12 of 13

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 5065/0914

Pages: 8

Date Recorded: Jul. 09, 2013

Supporting Documents: assignment-tm-5065-0914.pdf

Assignor

Name: BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Execution Date: Jul. 09, 2013

Legal Entity Type: CANADIAN CHARTERED BANK

State or Country Where Organized: CANADA

Assignee

Name: GFA BRANDS, INC.

State or Country Where Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: HENRY LEBOWITZ
 Correspondent Address: ONE NEW YORK PLAZA
 FRIED FRANK LLP
 NEW YORK, NY 10004

Domestic Representative - Not Found

Assignment 13 of 13

Conveyance: TRADEMARK COLLATERAL AGREEMENT
 Reel/Frame: 5068/0393 Pages: 9
 Date Recorded: Jul. 11, 2013
 Supporting Documents: [assignment-tm-5068-0393.pdf](#)

Assignor

Name: GFA BRANDS, INC. Execution Date: Jul. 09, 2013
 Legal Entity Type: CORPORATION State or Country Where Organized: DELAWARE

Assignee

Name: CITIBANK, N.A., AS ADMINISTRATIVE AGENT
 Legal Entity Type: NATIONAL ASSOCIATION State or Country Where Organized: UNITED STATES

Address: 390 GREENWICH STREET
 NEW YORK, NEW YORK 10013

Correspondent

Correspondent Name: LATHAM & WATKINS LLP
 Correspondent Address: 650 TOWN CENTER DRIVE, SUITE 2000
 COSTA MESA, CA 92626

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 4

Type of Proceeding: Opposition

Proceeding Number: 91193265 Filing Date: Dec 31, 2009
 Status: Terminated Status Date: Apr 16, 2010
 Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: Isaren AB; c/o Brejans
 Correspondent Address: MARK LEBOW
 YOUNG & THOMPSON
 209 MADISON STREET, SUITE 500
 ALEXANDRIA VA , 22314
 UNITED STATES
 Correspondent e-mail: trademarks@young-thompson.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------------------|---|-----------------|---------------------|
| SMART BALANCE GOLF | Abandoned - After Inter-Partes Decision Plaintiff(s) | <u>79065432</u> | |

Name: GFA Brands, Inc.

Correspondent Address: PATRICK M. BERGIN
 DAVIS & KUELTHAU, S.C.
 111 E. KILBOURN AVE., SUITE 1400
 MILWAUKEE WI , 53202
 UNITED STATES
 Correspondent e-mail: pbergin@dkattorneys.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--|-----------------|---------------------|
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |
| SMART BALANCE | Renewed | <u>75127811</u> | <u>2276285</u> |
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |
| SMART BALANCE | | | |

| | | | |
|---------------------|--|-----------------|----------------|
| SMART BALANCE | Registered | <u>77512724</u> | <u>3649833</u> |
| SMART BALANCE OMEGA | Section 8 and 15 - Accepted and Acknowledged | <u>78272133</u> | <u>2958216</u> |
| SMART BALANCE | Abandoned - No Statement Of Use Filed | <u>77200582</u> | |
| SMART BALANCE | Registered | <u>77566103</u> | <u>3747526</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 31, 2009 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Jan 05, 2010 | Feb 14, 2010 |
| 3 | PENDING, INSTITUTED | Jan 05, 2010 | |
| 4 | NOTICE OF DEFAULT | Mar 02, 2010 | |
| 5 | BOARD'S DECISION: SUSTAINED | Apr 16, 2010 | |
| 6 | TERMINATED | Apr 16, 2010 | |

Type of Proceeding: Opposition

Proceeding Number: 91193087 **Filing Date:** Dec 21, 2009
Status: Terminated **Status Date:** Dec 01, 2010
Interlocutory Attorney: JENNIFER KRISP

Defendant

Name: Radlo Foods LLC
Correspondent Address: BASSAM N IBRAHIM
BUCHANAN INGERSOLL & ROONEY PC
1737 KING STREET, SUITE 500
ALEXANDRIA VA , 22314-1404
UNITED STATES
Correspondent e-mail: bassam.ibrahim@bipc.com , lloyd.smith@bipc.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|----------------|---|-----------------|---------------------|
| SMART GOODNESS | Abandoned - After Inter-Partes Decision | <u>77620901</u> | |

Plaintiff(s)

Name: GFA Brands, Inc.
Correspondent Address: PATRICK M BERGIN
DAVIS & KUELTHAU SC
111 EAST KILBOURN AVENUE, SUITE 1400
MILWAUKEE WI , 53202
UNITED STATES
Correspondent e-mail: jheino@dkattorneys.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------------|--|-----------------|---------------------|
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |
| SMART BALANCE | Renewed | <u>75127811</u> | <u>2276285</u> |
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |
| SMART BALANCE | Registered | <u>77512724</u> | <u>3649833</u> |
| SMART BALANCE OMEGA | Section 8 and 15 - Accepted and Acknowledged | <u>78272133</u> | <u>2958216</u> |
| SMART BALANCE | Abandoned - No Statement Of Use Filed | <u>77200582</u> | |
| SMART BALANCE | Registered | <u>77566103</u> | <u>3747526</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 21, 2009 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Dec 21, 2009 | Jan 30, 2010 |
| 3 | PENDING, INSTITUTED | Dec 21, 2009 | |
| 4 | ANSWER | Jan 25, 2010 | |

| | | |
|----|---------------------------------------|--------------|
| 5 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Mar 30, 2010 |
| 6 | EXTENSION OF TIME GRANTED | Apr 05, 2010 |
| 7 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Mar 31, 2010 |
| 8 | EXTENSION OF TIME GRANTED | Apr 12, 2010 |
| 9 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Apr 30, 2010 |
| 10 | EXTENSION OF TIME GRANTED | May 10, 2010 |
| 11 | CHANGE OF CORRESPONDENCE ADDRESS | May 13, 2010 |
| 12 | D'S CHANGE OF CORRESPONDENCE ADDRESS | May 13, 2010 |
| 13 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Jun 29, 2010 |
| 14 | EXTENSION OF TIME GRANTED | Jul 08, 2010 |
| 15 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Aug 30, 2010 |
| 16 | EXTENSION OF TIME GRANTED | Sep 11, 2010 |
| 17 | STIPULATION FOR AN EXTENSION OF TIME | Oct 26, 2010 |
| 18 | EXTENSION OF TIME GRANTED | Oct 26, 2010 |
| 19 | WITHDRAWAL OF APPLICATION | Nov 23, 2010 |
| 20 | BOARD'S DECISION: SUSTAINED | Dec 01, 2010 |
| 21 | TERMINATED | Dec 01, 2010 |

Type of Proceeding: Opposition

Proceeding Number: 91162269 Filing Date: Sep 24, 2004
 Status: Terminated Status Date: Apr 24, 2005
 Interlocutory Attorney: ANGELA LYKOS

Defendant

Name: Ripon Foods, Inc.

Correspondent Address: Mark A. Paskar
 Bryan Cave LLP
 211 North Broadway Suite 3600
 St. Louis MO U SA , 63102-2750

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|------------|---|-----------------|---------------------|
| SMART BAKE | Abandoned - After Inter-Partes Decision | <u>78198463</u> | |

Plaintiff(s)

Name: GFA Brands, Inc.

Correspondent Address: John L. Ambrogi
 Welsh & Katz, Ltd.
 120 South Riverside Plaza 22nd Floor
 Chicago IL , 60606
 UNITED STATES

Correspondent e-mail: jladocket@welshkatz.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--------------------|-----------------|---------------------|
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Sep 24, 2004 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Sep 25, 2004 | Nov 04, 2004 |
| 3 | PENDING, INSTITUTED | Sep 25, 2004 | |
| 4 | NOTICE OF DEFAULT | Mar 12, 2005 | |
| 5 | BOARD'S DECISION: SUSTAINED | Apr 24, 2005 | |
| 6 | TERMINATED | Apr 24, 2005 | |

Type of Proceeding: Extension of Time

Proceeding Number: 78198463 Filing Date: Apr 12, 2004
 Status: Terminated Status Date: Oct 27, 2004
 Interlocutory Attorney:

Defendant

Name: Ripon Foods, Inc.

Correspondent Address: Mark A. Paskar
Bryan Cave LLP
211 North Broadway Suite 3600
St. Louis MO , 63102-2750
UNITED STATES

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|------------|---|-----------------|---------------------|
| SMART BAKE | Abandoned - After Inter-Partes Decision | <u>78198463</u> | |

Potential Opposer(s)

Name: GFA Brands, Inc.

Correspondent Address: John L. Ambrogi
Welsh & Katz, Ltd.
120 South Riverside Plaza 22nd Floor
Chicago IL , 60606
UNITED STATES

Correspondent e-mail: jjadocket@welshkatz.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--------------------|-----------------|---------------------|
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|-------------------------------------|--------------|----------|
| 1 | INCOMING - EXT TIME TO OPPOSE FILED | Apr 12, 2004 | |
| 2 | EXTENSION OF TIME GRANTED | Apr 12, 2004 | |
| 3 | INCOMING - EXT TIME TO OPPOSE FILED | May 26, 2004 | |
| 4 | EXTENSION OF TIME GRANTED | May 26, 2004 | |
| 5 | INCOMING - EXT TIME TO OPPOSE FILED | Jul 23, 2004 | |
| 6 | EXTENSION OF TIME GRANTED | Jul 23, 2004 | |



SC EXHIBIT
Applicant's
+
Balance Bar Co
vs GFA Brands

GFASB018090

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

Int. Cl.: 29

Prior U.S. Cl.: 46

Reg. No. 3,649,833

United States Patent and Trademark Office

Registered July 7, 2009

TRADEMARK
PRINCIPAL REGISTER

SMART BALANCE

GFA BRANDS, INC. (DELAWARE CORPORATION)
115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NJ 07652

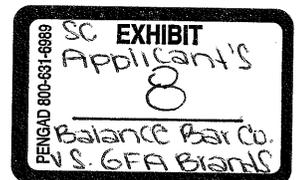
THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: PEANUT BUTTER, IN CLASS 29 (U.S. CL. 46).

SER. NO. 77-512,724, FILED 7-1-2008.

FIRST USE 10-0-2005; IN COMMERCE 10-0-2005.

ALEX KEAM, EXAMINING ATTORNEY



Attorney/Correspondence Information

Attorney of Record

Attorney Name: Larry H. Tronco
Attorney Primary Email docket@hollandhart.com
Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Larry H. Tronco
Holland & Hart LLP
P.O. Box 8749
Attn: Trademark Docketing
Denver, COLORADO 80201
UNITED STATES

Phone: (303) 473-2873

Fax: (303) 473-2720

Correspondent e-mail: docket@hollandhart.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|---|-------------------|
| May 21, 2014 | ATTORNEY REVOKED AND/OR APPOINTED | |
| May 21, 2014 | TEAS REVOKE/APPOINT ATTORNEY RECEIVED | |
| Nov. 15, 2013 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Nov. 15, 2013 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jul. 17, 2013 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Mar. 15, 2012 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Mar. 15, 2012 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jul. 07, 2009 | REGISTERED-PRINCIPAL REGISTER | |
| Apr. 21, 2009 | PUBLISHED FOR OPPOSITION | |
| Apr. 01, 2009 | NOTICE OF PUBLICATION | |
| Mar. 16, 2009 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 70884 |
| Mar. 16, 2009 | ASSIGNED TO LIE | 70884 |
| Mar. 16, 2009 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Mar. 06, 2009 | TEAS/EMAIL CORRESPONDENCE ENTERED | 88889 |
| Mar. 05, 2009 | CORRESPONDENCE RECEIVED IN LAW OFFICE | 88889 |
| Mar. 05, 2009 | TEAS RESPONSE TO OFFICE ACTION RECEIVED | |
| Nov. 05, 2008 | AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP | |
| Oct. 09, 2008 | NOTIFICATION OF NON-FINAL ACTION E-MAILED | 6325 |
| Oct. 09, 2008 | NON-FINAL ACTION E-MAILED | 6325 |
| Oct. 09, 2008 | NON-FINAL ACTION WRITTEN | 75571 |
| Oct. 06, 2008 | ASSIGNED TO EXAMINER | 75571 |
| Jul. 07, 2008 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jul. 07, 2009

Assignment Abstract Of Title Information

Summary

Total Assignments: 6

Registrant: GFA BRANDS, INC.

Assignment 1 of 6

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [3882/0123](#)

Pages: 3

Date Recorded: Nov. 03, 2008

Supporting Documents: [assignment-tm-3882-0123.pdf](#)

Name: SMART BALANCE, INC.
Legal Entity Type: CORPORATION

Assignor

Execution Date: Oct. 31, 2008

State or Country Where Organized: DELAWARE

Name: GFA BRANDS, INC.
Legal Entity Type: CORPORATION

Assignee

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 E. KILBOURN AVE.
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 2 of 6

Conveyance: SECURITY INTEREST

Reel/Frame: 4091/0319

Pages: 10

Date Recorded: Nov. 05, 2009

Supporting Documents: [assignment-tm-4091-0319.pdf](#)

Name: GFA BRANDS, INC.
Legal Entity Type: CORPORATION

Assignor

Execution Date: Nov. 04, 2009

State or Country Where Organized: DELAWARE

Name: BANK OF MONTREAL, AS AGENT
Legal Entity Type: CHARTERED BANK

Assignee

State or Country Where Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 3 of 6

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 4812/0734

Pages: 7

Date Recorded: Jul. 02, 2012

Supporting Documents: [assignment-tm-4812-0734.pdf](#)

Name: BANK OF MONTREAL
Legal Entity Type: CANADIAN CHARTERED BANK

Assignor

Execution Date: Jul. 02, 2012

State or Country Where Organized: CANADA

Name: GFA BRANDS, INC.
Legal Entity Type: CORPORATION

Assignee

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: JASON L. GREENBERG

Correspondent Address: ONE NEW YORK PLAZA
FRIED FRANK LLP
NEW YORK, NY 10004-1980

Domestic Representative - Not Found

Assignment 4 of 6

Conveyance: SECURITY INTEREST

Reel/Frame: 4813/0493

Pages: 9

Date Recorded: Jul. 02, 2012

Supporting Documents: assignment-tm-4813-0493.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Jul. 02, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT

Legal Entity Type: CHARTERED BANK

State or Country Where Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 5 of 6

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 5065/0914

Pages: 8

Date Recorded: Jul. 09, 2013

Supporting Documents: assignment-tm-5065-0914.pdf

Assignor

Name: BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Execution Date: Jul. 09, 2013

Legal Entity Type: CANADIAN CHARTERED BANK

State or Country Where Organized: CANADA

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: HENRY LEBOWITZ

Correspondent Address: ONE NEW YORK PLAZA
FRIED FRANK LLP
NEW YORK, NY 10004

Domestic Representative - Not Found

Assignment 6 of 6

Conveyance: TRADEMARK COLLATERAL AGREEMENT

Reel/Frame: 5068/0393

Pages: 9

Date Recorded: Jul. 11, 2013

Supporting Documents: assignment-tm-5068-0393.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Jul. 09, 2013

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: CITIBANK, N.A., AS ADMINISTRATIVE AGENT

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized: UNITED STATES

Address: 390 GREENWICH STREET
NEW YORK, NEW YORK 10013

Correspondent

Correspondent Name: LATHAM & WATKINS LLP
Correspondent Address: 650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CA 92626

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: 91193265 Filing Date: Dec 31, 2009
Status: Terminated Status Date: Apr 16, 2010
Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: Isaren AB; c/o Brejans
Correspondent Address: MARK LEBOW
YOUNG & THOMPSON
209 MADISON STREET, SUITE 500
ALEXANDRIA VA , 22314
UNITED STATES
Correspondent e-mail: trademarks@young-thompson.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------------------|---|-----------------|---------------------|
| SMART BALANCE GOLF | Abandoned - After Inter-Partes Decision Plaintiff(s) | <u>79065432</u> | |

Name: GFA Brands, Inc.

Correspondent Address: PATRICK M. BERGIN
DAVIS & KUELTHAU, S.C.
111 E. KILBOURN AVE., SUITE 1400
MILWAUKEE WI , 53202
UNITED STATES
Correspondent e-mail: pbergin@dkattorneys.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------------|--|-----------------|---------------------|
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |
| SMART BALANCE | Renewed | <u>75127811</u> | <u>2276285</u> |
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |
| SMART BALANCE | Registered | <u>77512724</u> | <u>3649833</u> |
| SMART BALANCE OMEGA | Section 8 and 15 - Accepted and Acknowledged | <u>78272133</u> | <u>2958216</u> |
| SMART BALANCE | Abandoned - No Statement Of Use Filed | <u>77200582</u> | |
| SMART BALANCE | Registered | <u>77566103</u> | <u>3747526</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 31, 2009 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Jan 05, 2010 | Feb 14, 2010 |
| 3 | PENDING, INSTITUTED | Jan 05, 2010 | |
| 4 | NOTICE OF DEFAULT | Mar 02, 2010 | |
| 5 | BOARD'S DECISION: SUSTAINED | Apr 16, 2010 | |
| 6 | TERMINATED | Apr 16, 2010 | |

Type of Proceeding: Opposition

Proceeding Number: 91193087 Filing Date: Dec 21, 2009
Status: Terminated Status Date: Dec 01, 2010
Interlocutory Attorney: JENNIFER KRISP

Defendant

Name: Radlo Foods LLC

Correspondent Address: BASSAM N IBRAHIM
BUCHANAN INGERSOLL & ROONEY PC
1737 KING STREET, SUITE 500
ALEXANDRIA VA , 22314-1404
UNITED STATES

Correspondent e-mail: bassam.ibrahim@bipc.com , lloyd.smith@bipc.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|----------------|---|-----------------|---------------------|
| SMART GOODNESS | Abandoned - After Inter-Partes Decision Plaintiff(s) | <u>77620901</u> | |

Name: GFA Brands, Inc.

Correspondent Address: PATRICK M BERGIN
DAVIS & KUELTHAU SC
111 EAST KILBOURN AVENUE, SUITE 1400
MILWAUKEE WI , 53202
UNITED STATES

Correspondent e-mail: jheino@dkattorneys.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------------|--|-----------------|---------------------|
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |
| SMART BALANCE | Renewed | <u>75127811</u> | <u>2276285</u> |
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |
| SMART BALANCE | Registered | <u>77512724</u> | <u>3649833</u> |
| SMART BALANCE OMEGA | Section 8 and 15 - Accepted and Acknowledged | <u>78272133</u> | <u>2958216</u> |
| SMART BALANCE | Abandoned - No Statement Of Use Filed | <u>77200582</u> | |
| SMART BALANCE | Registered | <u>77566103</u> | <u>3747526</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 21, 2009 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Dec 21, 2009 | Jan 30, 2010 |
| 3 | PENDING, INSTITUTED | Dec 21, 2009 | |
| 4 | ANSWER | Jan 25, 2010 | |
| 5 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Mar 30, 2010 | |
| 6 | EXTENSION OF TIME GRANTED | Apr 05, 2010 | |
| 7 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Mar 31, 2010 | |
| 8 | EXTENSION OF TIME GRANTED | Apr 12, 2010 | |
| 9 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Apr 30, 2010 | |
| 10 | EXTENSION OF TIME GRANTED | May 10, 2010 | |
| 11 | CHANGE OF CORRESPONDENCE ADDRESS | May 13, 2010 | |
| 12 | D'S CHANGE OF CORRESPONDENCE ADDRESS | May 13, 2010 | |
| 13 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Jun 29, 2010 | |
| 14 | EXTENSION OF TIME GRANTED | Jul 08, 2010 | |
| 15 | D'S MOT FOR EXTEN. OF TIME W/ CONSENT | Aug 30, 2010 | |
| 16 | EXTENSION OF TIME GRANTED | Sep 11, 2010 | |
| 17 | STIPULATION FOR AN EXTENSION OF TIME | Oct 26, 2010 | |
| 18 | EXTENSION OF TIME GRANTED | Oct 26, 2010 | |
| 19 | WITHDRAWAL OF APPLICATION | Nov 23, 2010 | |
| 20 | BOARD'S DECISION: SUSTAINED | Dec 01, 2010 | |
| 21 | TERMINATED | Dec 01, 2010 | |



PENGAD 800-631-8989
 Balance Bar Co.
 vs. GFA Brands
 Applicant's
 SC EXHIBIT

GFA SB018237

USE ACTUAL COLOR CHIPS FOR COLOR MATCH

| | | | |
|---|-----------------------------------|--------------------|---------------|
| GFA BRANDS, INC. | | SMART BALANCE INC. | |
| 115 WEST CENTURY ROAD • SUITE 260 • PARAMUS • NEW JERSEY • 07652 USA | | | |
| p 201.421.3922 / 201.568.9300 f 201.568.6374 w www.smartbalance.com | | | |
| file name: | 10045_SmBal_PB_RRChky_26oz-v8a.ai | size: | 11.25"x 3.54" |
| product: | Peanut Butter | sku: | 033776 10045 |
| version: | ill CS4 | print: | 100% |
| notes: | | | |
| designer: | jng | date: | 7.7.2010 |

COLORS

PROCESS COLORS

Cyan Magenta Yellow Black

SPOT COLORS

PMS 3135C

Callous DMP Dieline DMP

FONTS

Century Bold
 Century BlackIta10
 Helvetica Bod
 Helvetica Condensed
 Helvetica Condensed Bold
 Helvetica Light
 HelveticaNeue BoldCond
 HelveticaNeue Condensed
 HelveticaNeue LightCond
 Impact
 Myriad Roman

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,952,127

United States Patent and Trademark Office

Registered May 17, 2005

**TRADEMARK
PRINCIPAL REGISTER**

SMART BALANCE

GFA BRANDS, INC. (OHIO CORPORATION)
211 KNICKERBOCKER ROAD
CRESSKILL, NJ 07626

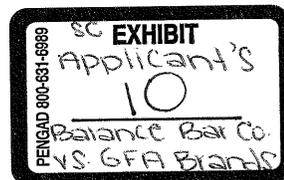
OWNER OF U.S. REG. NOS. 2,200,663 AND
2,276,285.

FOR: POPPED AND PROCESSED POPCORN, IN
CLASS 30 (U.S. CL. 46).

SN 76-252,358, FILED 5-4-2001.

FIRST USE 9-0-2002; IN COMMERCE 9-0-2002.

SAMUEL E. SHARPER JR., EXAMINING ATTOR-
NEY



Owner Address: 115 West Century Road
Suite 260
Paramus, NEW JERSEY 07652
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Larry H. Tronco

Attorney Primary Email Address: doCKET@hollandhart.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Larry H. Tronco
Holland & Hart LLP
P.O. Box 8749
Attn: Trademark Docketing
Denver, COLORADO 80201
UNITED STATES

Phone: (303) 473-2873

Fax: (303) 473-2720

Correspondent e-mail: doCKET@hollandhart.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|---|-------------------|
| May 21, 2014 | ATTORNEY REVOKED AND/OR APPOINTED | |
| May 21, 2014 | TEAS REVOKE/APPOINT ATTORNEY RECEIVED | |
| Nov. 15, 2013 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Nov. 15, 2013 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jul. 17, 2013 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Mar. 15, 2012 | APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED | 88888 |
| Mar. 15, 2012 | TEAS CHANGE OF OWNER ADDRESS RECEIVED | |
| Jul. 13, 2010 | REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK. | 67723 |
| Jul. 13, 2010 | CASE ASSIGNED TO POST REGISTRATION PARALEGAL | 67723 |
| Jun. 24, 2010 | TEAS SECTION 8 & 15 RECEIVED | |
| Nov. 18, 2009 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Nov. 11, 2009 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Nov. 07, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| Jun. 06, 2007 | ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY | |
| May 23, 2007 | AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP | |
| May 17, 2005 | REGISTERED-PRINCIPAL REGISTER | |
| Mar. 17, 2005 | LAW OFFICE REGISTRATION REVIEW COMPLETED | 78288 |
| Feb. 25, 2005 | ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED | |
| Feb. 24, 2005 | STATEMENT OF USE PROCESSING COMPLETE | 76874 |
| Feb. 24, 2005 | EXTENSION 1 GRANTED | 76874 |
| Feb. 09, 2005 | USE AMENDMENT FILED | 76874 |
| Feb. 09, 2005 | EXTENSION 1 FILED | 76874 |
| Feb. 09, 2005 | TEAS STATEMENT OF USE RECEIVED | |
| Feb. 09, 2005 | TEAS EXTENSION RECEIVED | |
| Jan. 18, 2005 | NOA MAILED - SOU REQUIRED FROM APPLICANT | |
| Oct. 26, 2004 | PUBLISHED FOR OPPOSITION | |
| Oct. 06, 2004 | NOTICE OF PUBLICATION | |

| | | |
|---------------|---|-------|
| Aug. 27, 2004 | ASSIGNED TO LIE | 78288 |
| Aug. 20, 2004 | LAW OFFICE PUBLICATION REVIEW COMPLETED | 66230 |
| Aug. 18, 2004 | ASSIGNED TO LIE | 66230 |
| Aug. 12, 2004 | UNRESPONSIVE/DUPLICATE PAPER RECEIVED | |
| Aug. 12, 2004 | PAPER RECEIVED | |
| Aug. 11, 2004 | APPROVED FOR PUB - PRINCIPAL REGISTER | |
| Mar. 22, 2004 | CASE FILE IN TICRS | |
| Feb. 27, 2003 | ASSIGNED TO EXAMINER | 68625 |
| Mar. 26, 2002 | LETTER OF SUSPENSION MAILED | |
| Jan. 08, 2002 | CORRESPONDENCE RECEIVED IN LAW OFFICE | |
| Jul. 25, 2001 | NON-FINAL ACTION MAILED | |
| Jul. 10, 2001 | ASSIGNED TO EXAMINER | 78447 |

Maintenance Filings or Post Registration Information

Affidavit of Continued Section 8 - Accepted
Use:

Affidavit of Section 15 - Accepted
Incontestability:

TM Staff and Location Information

TM Staff Information - None
File Location

Current Location: TMEG LAW OFFICE 108

Date in Location: Jul. 13, 2010

Assignment Abstract Of Title Information

Summary

Total Assignments: 12

Registrant: GFA Brands, Inc.

Assignment 1 of 12

Conveyance: SECURITY AGREEMENT

Reel/Frame: 2952/0167

Pages: 35

Date Recorded: Apr. 08, 2004

Supporting Documents: [assignment-tm-2952-0167.pdf](#)

Assignor

Name: GFA BRANDS, INC.

Execution Date: Mar. 31, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: UNION BANK OF CALIFORNIA, N.A., AS ADMINISTRATIVE AGENT FOR THE LENDERS

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where Organized: No Place Where Organized Found

Address: 445 SOUTH FIGUEROA STREET, 13TH STREET
ATTN: GARY KIRSHNER
LOS ANGELES, CALIFORNIA 90071

Correspondent

Correspondent Name: PILLSBURY WINTHROP LLP

Correspondent Address: REX D. FRAZIER, ESQ.
725 SOUTH FIGUEROA STREET, SUITE 2800
LOS ANGELES, CALIFORNIA 90017-5406

Domestic Representative - Not Found

Assignment 2 of 12

Conveyance: CHANGE OF ADDRESS

Reel/Frame: 2941/0281

Pages: 2

Date Recorded: Sep. 21, 2004

Supporting Documents: [assignment-tm-2941-0281.pdf](#)

Assignor

Name: GFA BRANDS, INC.

Execution Date: Aug. 10, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 211 KNICKERBOCKER ROAD
CRESKILL, NEW JERSEY 07626

Correspondent

Correspondent Name: ROPES & GRAY, LLP

Correspondent Address: JACOB E. COMER, ESQ.
ONE INTERNATIONAL PLACE
BOSTON, MA 02110

Domestic Representative - Not Found

Assignment 3 of 12

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 3544/0352

Pages: 5

Date Recorded: May 15, 2007

Supporting Documents: assignment-tm-3544-0352.pdf

Assignor

Name: UNION BANK OF CALIFORNIA N.A.

Execution Date: May 14, 2007

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: P.O. BOX 397 211 KNICKERBOCKER ROAD
CRESKILL, NEW JERSEY 07626

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 EAST KILBOURN AVENUE
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 4 of 12

Conveyance: FIRST LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 3652/0879

Pages: 12

Date Recorded: Nov. 01, 2007

Supporting Documents: assignment-tm-3652-0879.pdf

Assignor

Name: BSB ACQUISITION CO., INC.

Execution Date: May 21, 2007

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Name: BOULDER SPECIALTY BRANDS, INC.

Execution Date: May 21, 2007

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: BANK OF AMERICA, N.A.

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized: No Place Where Organized Found

Address: 1455 MARKET ST.
5TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103

Correspondent

Correspondent Name: SUSAN REISS

Correspondent Address: 599 LEXINGTON AVENUE
SHEARMAN & STERLING LLP
NEW YORK, NY 10022

Domestic Representative - Not Found

Assignment 5 of 12

Conveyance: SECOND LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 3652/0891

Pages: 12

Date Recorded: Nov. 01, 2007

Supporting Documents: assignment-tm-3652-0891.pdf

Assignor

Name: BSB ACQUISITION CO., INC.

Execution Date: May 21, 2007

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Name: BOULDER SPECIALTY BRANDS, INC.

Execution Date: May 21, 2007

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: BANK OF AMERICA, N.A.

State or Country Where Organized: No Place Where Organized Found

Legal Entity Type: NATIONAL ASSOCIATION

Address: 1455 MARKET ST.
5TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103

Correspondent

Correspondent Name: SUSAN REISS

Correspondent Address: 599 LEXINGTON AVENUE
SHEARMAN & STERLING LLP
NEW YORK, NY 10022

Domestic Representative - Not Found

Assignment 6 of 12

Conveyance: RELEASE OF FIRST LIEN INTELLECTUAL PROPERTY SECURITY AGREEMENT

Reel/Frame: 4090/0972

Pages: 11

Date Recorded: Nov. 04, 2009

Supporting Documents: assignment-tm-4090-0972.pdf

Assignor

Name: BANK OF AMERICA, N.A.

Execution Date: Nov. 04, 2009

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: BSB ACQUISITION CO., INC.

State or Country Where Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: 115 W. CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Name: BOULDER SPECIALTY BRANDS, INC.

State or Country Where Organized: DELAWARE

Legal Entity Type: CORPORATION

Address: 115 WEST CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: PATRICK M. BERGIN

Correspondent Address: 111 E. KILBOURN AVE.
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 7 of 12

Conveyance: RELEASE OF SECOND LIEN SECURITY INTEREST

Reel/Frame: 4090/0983

Pages: 11

Date Recorded: Nov. 04, 2009

Supporting Documents: assignment-tm-4090-0983.pdf

Assignor

Name: BANK OF AMERICA, N.A.

Execution Date: Nov. 04, 2009

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: BSB ACQUISITION CO., INC.
Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 W. CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Name: BOULDER SPECIALTY BRANDS, INC.
Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 W. CENTURY RD.
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: PATRICK M. BERGIN
Correspondent Address: 111 E. KILBOURN AVE.
SUITE 1400
MILWAUKEE, WI 53202

Domestic Representative - Not Found

Assignment 8 of 12

Conveyance: SECURITY INTEREST
Reel/Frame: 4091/0319
Date Recorded: Nov. 05, 2009
Supporting Documents: assignment-tm-4091-0319.pdf

Pages: 10

Assignor

Name: GFA BRANDS, INC.
Legal Entity Type: CORPORATION

Execution Date: Nov. 04, 2009

State or Country Where Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT
Legal Entity Type: CHARTERED BANK

State or Country Where Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA
Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 9 of 12

Conveyance: RELEASE BY SECURED PARTY
Reel/Frame: 4812/0734
Date Recorded: Jul. 02, 2012
Supporting Documents: assignment-tm-4812-0734.pdf

Pages: 7

Assignor

Name: BANK OF MONTREAL
Legal Entity Type: CANADIAN CHARTERED BANK

Execution Date: Jul. 02, 2012

State or Country Where Organized: CANADA

Assignee

Name: GFA BRANDS, INC.
Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: JASON L. GREENBERG
Correspondent Address: ONE NEW YORK PLAZA
FRIED FRANK LLP
NEW YORK, NY 10004-1980

Domestic Representative - Not Found

Assignment 10 of 12

Conveyance: SECURITY INTEREST

Reel/Frame: 4813/0493

Pages: 9

Date Recorded: Jul. 02, 2012

Supporting Documents: assignment-tm-4813-0493.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Jul. 02, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: BANK OF MONTREAL, AS AGENT

Legal Entity Type: CHARTERED BANK

State or Country Where Organized: CANADA

Address: 115 SOUTH LASALLE STREET
CHICAGO, ILLINOIS 60603

Correspondent

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET
CHAPMAN AND CUTLER LLP
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 11 of 12

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 5065/0914

Pages: 8

Date Recorded: Jul. 09, 2013

Supporting Documents: assignment-tm-5065-0914.pdf

Assignor

Name: BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Execution Date: Jul. 09, 2013

Legal Entity Type: CANADIAN CHARTERED BANK

State or Country Where Organized: CANADA

Assignee

Name: GFA BRANDS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 115 WEST CENTURY ROAD
SUITE 260
PARAMUS, NEW JERSEY 07652

Correspondent

Correspondent Name: HENRY LEBOWITZ

Correspondent Address: ONE NEW YORK PLAZA
FRIED FRANK LLP
NEW YORK, NY 10004

Domestic Representative - Not Found

Assignment 12 of 12

Conveyance: TRADEMARK COLLATERAL AGREEMENT

Reel/Frame: 5068/0393

Pages: 9

Date Recorded: Jul. 11, 2013

Supporting Documents: assignment-tm-5068-0393.pdf

Assignor

Name: GFA BRANDS, INC.

Execution Date: Jul. 09, 2013

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: CITIBANK, N.A., AS ADMINISTRATIVE AGENT

Legal Entity Type: NATIONAL ASSOCIATION

State or Country Where Organized: UNITED STATES

Address: 390 GREENWICH STREET
NEW YORK, NEW YORK 10013

Correspondent

Correspondent Name: LATHAM & WATKINS LLP

Correspondent Address: 650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CA 92626

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 5

Type of Proceeding: Opposition

Proceeding Number: 91193265

Filing Date: Dec 31, 2009

Status: Terminated

Status Date: Apr 16, 2010

Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: Isaren AB; c/o Brejans

Correspondent Address: MARK LEBOW
YOUNG & THOMPSON
209 MADISON STREET, SUITE 500
ALEXANDRIA VA , 22314
UNITED STATES

Correspondent e-mail: trademarks@young-thompson.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|--------------------|---|-----------------|---------------------|
| SMART BALANCE GOLF | Abandoned - After Inter-Partes Decision Plaintiff(s) | <u>79065432</u> | |

Name: GFA Brands, Inc.

Correspondent Address: PATRICK M. BERGIN
DAVIS & KUELTHAU, S.C.
111 E. KILBOURN AVE., SUITE 1400
MILWAUKEE WI , 53202
UNITED STATES

Correspondent e-mail: pbergin@dkattorneys.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------------|--|-----------------|---------------------|
| SMART BALANCE | Renewed | <u>75977525</u> | <u>2200663</u> |
| SMART BALANCE | Renewed | <u>75127811</u> | <u>2276285</u> |
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |
| SMART BALANCE | Registered | <u>77512724</u> | <u>3649833</u> |
| SMART BALANCE OMEGA | Section 8 and 15 - Accepted and Acknowledged | <u>78272133</u> | <u>2958216</u> |
| SMART BALANCE | Abandoned - No Statement Of Use Filed | <u>77200582</u> | |
| SMART BALANCE | Registered | <u>77566103</u> | <u>3747526</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Dec 31, 2009 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Jan 05, 2010 | Feb 14, 2010 |
| 3 | PENDING, INSTITUTED | Jan 05, 2010 | |
| 4 | NOTICE OF DEFAULT | Mar 02, 2010 | |
| 5 | BOARD'S DECISION: SUSTAINED | Apr 16, 2010 | |
| 6 | TERMINATED | Apr 16, 2010 | |

Type of Proceeding: Opposition

Proceeding Number: 91193087

Filing Date: Dec 21, 2009

Status: Terminated

Status Date: Dec 01, 2010

Interlocutory Attorney: JENNIFER KRISP

Defendant

Name: Radlo Foods LLC

Proceeding Number: 91183204

Filing Date: Mar 26, 2008

Status: Terminated

Status Date: Sep 21, 2008

Interlocutory Attorney: ELIZABETH WINTER

Defendant

Name: Conagra Foods RDM, Inc.

Correspondent Address: CHRISTOPHER M. BIKUS
MCGRATH, NORTH, MULLIN & KRATZ, PC LLO
FIRST NATIONAL TOWER, 1601 DODGE STREET, SUITE 3700
OMAHA NE , 68102
UNITED STATES

Correspondent e-mail: cbikus@mcgrathnorth.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|-------------|--------------------|-----------------|---------------------|
| SMARTCAKES! | Registered | <u>77096048</u> | <u>3651641</u> |

Plaintiff(s)

Name: GFA Brands, Inc.

Correspondent Address: John L. Ambrogi
Welsh & Katz, Ltd.
120 S. Riverside Plaza, 22nd Floor
Chicago IL , 60606
UNITED STATES

Correspondent e-mail: jladocket@welshkatz.com

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--|-----------------|---------------------|
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|---|--------------|--------------|
| 1 | FILED AND FEE | Mar 26, 2008 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Mar 26, 2008 | May 05, 2008 |
| 3 | PENDING, INSTITUTED | Mar 26, 2008 | |
| 4 | ANSWER | May 05, 2008 | |
| 5 | MOTION TO AMEND APPLICATION | Jul 10, 2008 | |
| 6 | AMDT APPROVED; PL'S RESPONSE DUE 9/12/08 | Aug 13, 2008 | |
| 7 | WITHDRAWAL OF OPPOSITION | Sep 10, 2008 | |
| 8 | P'S CERTIFICATE OF SERVICE FOR WITHDRAWAL OF OPPOSITION | Sep 11, 2008 | |
| 9 | BD'S DECISION: DISMISSED W/ PREJUDICE | Sep 21, 2008 | |
| 10 | TERMINATED | Sep 21, 2008 | |

Type of Proceeding: Opposition

Proceeding Number: 91166719

Filing Date: Sep 23, 2005

Status: Terminated

Status Date: Mar 07, 2006

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: ConAgra Brands, Inc.

Correspondent Address: PATRICK C. STEPHENSON
MCGRATH NORTH MULLIN & KRATZ, PC LLO
SUITE 3700 FIRST NATIONAL TOWER 1601 DODGE STREET
OMAHA NE , 68102
UNITED STATES

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|-------------|--|-----------------|---------------------|
| SMART CHILI | Section 8 and 15 - Accepted and Acknowledged | <u>76595938</u> | <u>3187765</u> |

Plaintiff(s)

Name: GFA Brands, Inc.

Correspondent Address: JOHN L. AMBROGI,

WELSH & KATZ, LTD.,
 120 S RIVERSIDE PLZ FL 22
 CHICAGO IL , 60606-3913
 UNITED STATES

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--|-----------------|---------------------|
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |

Prosecution History

| Entry Number | History Text | Date | Due Date |
|--------------|--|--------------|--------------|
| 1 | FILED AND FEE | Sep 23, 2005 | |
| 2 | NOTICE AND TRIAL DATES SENT; ANSWER DUE: | Sep 29, 2005 | Nov 08, 2005 |
| 3 | PENDING, INSTITUTED | Sep 29, 2005 | |
| 4 | ANSWER | Nov 04, 2005 | |
| 5 | WITHDRAWAL OF OPPOSITION | Feb 09, 2006 | |
| 6 | BD'S DECISION: DISMISSED W/ PREJUDICE | Mar 07, 2006 | |
| 7 | TERMINATED | Mar 07, 2006 | |

Type of Proceeding: Extension of Time

Proceeding Number: 76595938 Filing Date: May 19, 2005
 Status: Terminated Status Date: Oct 15, 2005
 Interlocutory Attorney:

Defendant

Name: ConAgra Brands, Inc.

Correspondent Address: PATRICK C. STEPHENSON
 MCGRATH NORTH MULLIN & KRATZ, PC LLO
 SUITE 3700 FIRST NATIONAL TOWER 1601 DODGE STREET
 OMAHA NE , 68102
 UNITED STATES

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|-------------|--|-----------------|---------------------|
| SMART CHILI | Section 8 and 15 - Accepted and Acknowledged | <u>76595938</u> | <u>3187765</u> |

Potential Opposer(s)

Name: ProMark Brands Inc.

Correspondent Address: Gianfranco G. Mitrione/ Bert A. Collison (Of Counsel)
 Lathrop & Gage L.C.
 230 Park Avenue, Suite 1847
 New York NY , 10169
 UNITED STATES

Correspondent e-mail: gmitrione@lathropgage.com

Name: GFA Brands, Inc.

Correspondent Address: John L. Ambrogi
 Welsh & Katz, Ltd.
 120 S. Riverside Plaza 22nd Floor
 Chicago IL , 60606
 UNITED STATES

Correspondent e-mail: jladocket@welshkatz.com

Name: GFA Brands, Inc.

Correspondent Address: JOHN L. AMBROGI,
 WELSH & KATZ, LTD.,
 120 S RIVERSIDE PLZ FL 22
 CHICAGO IL , 60606-3913
 UNITED STATES

Associated marks

| Mark | Application Status | Serial Number | Registration Number |
|---------------|--|-----------------|---------------------|
| SMART BALANCE | Section 8 and 15 - Accepted and Acknowledged | <u>76252358</u> | <u>2952127</u> |

Prosecution History

| Entry | History Text | Date | Due Date |
|-------|--------------|------|----------|
|-------|--------------|------|----------|

| Number | | |
|--------|-------------------------------------|--------------|
| 1 | INCOMING - EXT TIME TO OPPOSE FILED | May 19, 2005 |
| 2 | EXTENSION OF TIME GRANTED | May 19, 2005 |
| 3 | INCOMING - EXT TIME TO OPPOSE FILED | Jun 08, 2005 |
| 4 | EXTENSION OF TIME GRANTED | Jun 08, 2005 |



American Heart Association
 Meets American Heart Association food criteria for saturated fat and cholesterol for healthy people over age 2.
While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of heart disease.
 U.S. PATENT NOS. 6,834,534; 6,843,497 & 6,630,192

33% MORE FREE
NEW 4 PACK
 Non-Hydrogenated
 No Trans Fat
 No Diacetyl Added

DIRECTIONS

1. Unfold package and place in a clean microwave **THIS SIDE UP**. Set microwave on HIGH for up to three minutes. Popping time may vary between microwaves.
 2. Listen to popping. Once the bag expands and popping has slowed to 1-2 seconds between pops, immediately stop cooking. Do not leave microwave unattended while cooking. Cooking too long may scorch popcorn and bag.
 3. Remove from microwave. Carefully open bag with opening away from you by pulling apart opposite corners at the top of the bag.
- CAUTION: HOT STEAM AND OIL!**
 It is normal to find some unpopcorned kernels. Do not reheat or reuse bag.



American Heart Association
 Meets American Heart Association food criteria for saturated fat and cholesterol for healthy people over age 2.
While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of heart disease.

SMART BALANCE
 DELUXE MICROWAVE POPCORN
SMART 'N HEALTHY!

33% MORE FREE
NEW 4 PACK
 Non-Hydrogenated
 No Trans Fat
 No Diacetyl Added

Nutrition Facts

Serving Size 3 Tbsp (31g) unpopped, 5 c. popped
 Servings Per Bag about 3

| Amount Per Serving | 1 Bag | % Daily Value* |
|------------------------|-------|----------------|
| Calories | 120 | 20 |
| Calories from Fat | 15 | 0 |
| Total Fat 2g** | 3% | 0% |
| Sat Fat 0g | 2% | 0% |
| Trans Fat 0g | | |
| Polyunsat Fat 0g | | |
| Monounsatur Fat 0.5g | | |
| Cholesterol 0mg | 0% | 0% |
| Sodium 85mg | 3% | 0% |
| Total Carb 14g | 8% | 2% |
| Dietary Fiber 5g | 18% | 4% |
| Sugars 0g | | |
| Protein 4g | 4% | 0% |

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

Supports Healthy Cholesterol Levels*

4 - 3 OZ. (85g) BAGS
 NET WT 12 OZ. (340g)

SC EXHIBIT
 Applicant's
 Balance Bar Co
 vs. GFA Brands

GFASB018104

NO TRANS FATS
LOW SODIUM • LOW FAT

U.S. PATENTS 5,578,334; 5,843,497 & 6,630,192

NON-HYDROGENATED

SEE NUTRITION INFO FOR
FAT & SAT FAT CONTENT

**SMART
BALANCE**

SMART 'N HEALTHY!

DELUXE MICROWAVE POPCORN

3-3 oz BAGS
(NET WT 9 oz) 255g



**American
Heart
Association**

Meets American Heart
Association food criteria for
saturated fat and cholesterol
for healthy people over age 2.

While daily habits affect heart disease
risk, lower saturated fat and cholesterol
may reduce the risk of heart disease.



®
D





GFASB018099

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

gfa

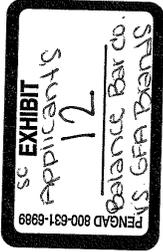
EXECUTION VERSION (2)

LICENSE AGREEMENT
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[Signatures contained on following page]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates set forth below.

REDACTED

SBA

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APPENDIX A
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APPENDIX B
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APPENDIX C
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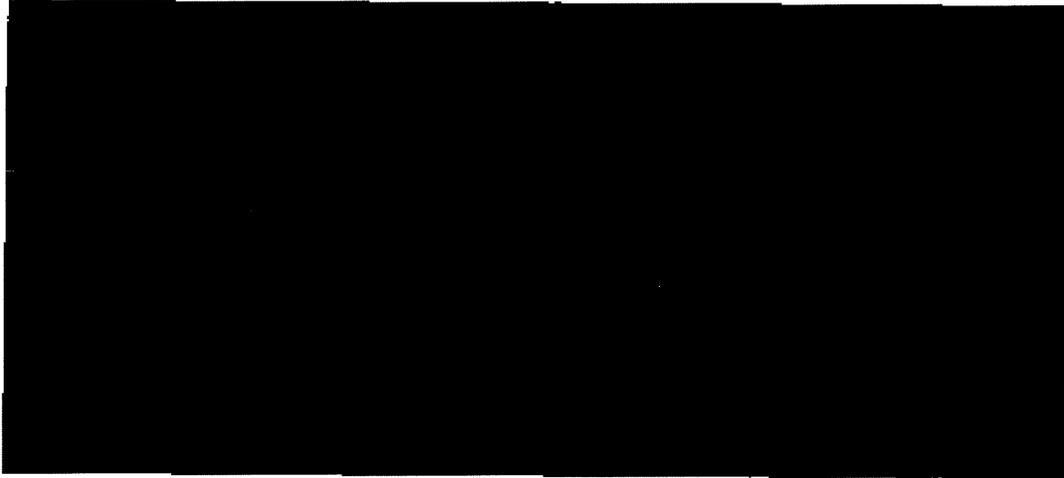
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MUTUAL CONFIDENTIALITY AGREEMENT

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GFA CONFIDENTIALITY AGREEMENT
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Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

| | A | B | C |
|----|----------------------------------|----------------------------------|----------------------------------|
| 1 | SMART BALANCE 2010 CUSTOMER LIST | SMART BALANCE 2011 CUSTOMER LIST | SMART BALANCE 2012 CUSTOMER LIST |
| 2 | REDACTED | REDACTED | REDACTED |
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SC EXHIBIT
Applicant's
13
Balance Bar Co.
vs GFA Brands

HIGHLY CONFIDENTIAL

GFASB022173

| | A | B | C |
|-----|----------------------------------|----------------------------------|----------------------------------|
| 1 | SMART BALANCE 2010 CUSTOMER LIST | SMART BALANCE 2011 CUSTOMER LIST | SMART BALANCE 2012 CUSTOMER LIST |
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|-----|----------------------------------|----------------------------------|----------------------------------|
| 1 | SMART BALANCE 2010 CUSTOMER LIST | SMART BALANCE 2011 CUSTOMER LIST | SMART BALANCE 2012 CUSTOMER LIST |
| 2 | | | |
| 132 | | REDACTED | |

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

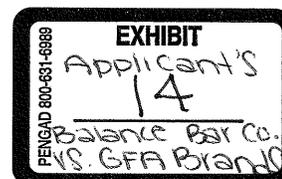
Total Smart Balance Brand (Gross Sales)

| FY2010 | FY2011 | FY2012 |
|----------|--------|--------|
| REDACTED | | |

Smart Balance Spreads (Gross Sales)

| FY2010 | FY2011 | FY2012 |
|----------|--------|--------|
| REDACTED | | |

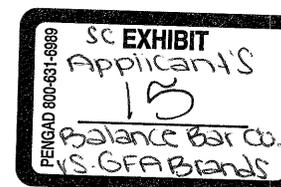
*Millions of Dollars



Opposition Nos. 91196954 and 91197748
 BALANCE BAR COMPANY v. GFA BRANDS, INC.
 Offered by Applicant GFA Brands, Inc.

| | A | B | C | D | E | F | G |
|----|---|--|--------------------------------------|------------------|------------------|-------------------|-------------|
| 1 | | | | | | | |
| 2 | | Total Media Spend: REDAC | 2007 Smart Balance Deliveries | | | | |
| 3 | | Media/Market | Reach % | Reach 3+% | Frequency | IMPS (000) | GRPs |
| 4 | | National Television | REDACTED | | | | |
| 5 | | Local Spreads Markets (Nationalized) | | | | | |
| 6 | | North West Markets (Nationalized) | | | | | |
| 7 | | Florida Markets (Nationalized) | | | | | |
| 8 | | National Radio | | | | | |
| 9 | | Combined Heavy Up Markets, National Cable | | | | | |
| 10 | | | | | | | |
| 11 | | | | | | | |
| 12 | | Total Media Spend: REDACT | 2008 Smart Balance Deliveries | | | | |
| 13 | | Media/Market | Reach % | Reach 3+% | Frequency | IMPS (000) | GRPs |
| 14 | | National Television | REDACTED | | | | |
| 15 | | Local Spreads Markets (Nationalized) | | | | | |
| 16 | | Florida Markets (Nationalized) | | | | | |
| 17 | | Combined Heavy Up Markets, National Cable & DR Print | | | | | |
| 18 | | | | | | | |
| 19 | | | | | | | |
| 20 | | Total Media Spend: REDACT | 2009 Smart Balance Deliveries | | | | |
| 21 | | Media/Market | Reach % | Reach 3+% | Frequency | IMPS (000) | GRPs |
| 22 | | National Cable | REDACTED | | | | |
| 23 | | Heavy Up Markets Nationalized | | | | | |
| 24 | | DR Print | | | | | |
| 25 | | Combined Heavy Up Markets, National Cable & DR Print | | | | | |
| 26 | | | | | | | |
| 27 | | | | | | | |
| 28 | | Total Media Spend: REDACT | 2010 Smart Balance Deliveries | | | | |
| 29 | | Media/Market | Reach % | Reach 3+% | Frequency | IMPS (000) | GRPs |
| 30 | | Combined TV - Local & National | REDACTED | | | | |
| 31 | | DR Print | | | | | |
| 32 | | Combined Heavy Up Markets, National Cable & DR Print | | | | | |

HIGHLY CONFIDENTIAL



GFASB019167

| | A | B | C | D | E | F | G |
|----|---|--|-------------------------------|------------------|------------------|-------------------|-------------|
| 33 | | | | | | | |
| 34 | | | | | | | |
| 35 | | Total Media Spend: REDAC | 2011 Smart Balance Deliveries | | | | |
| 36 | | Media/Market | Reach % | Reach 3+% | Frequency | IMPS (000) | GRPs |
| 37 | | National Cable | REDACTED | | | | |
| 38 | | Heavy Up Markets Nationalized | REDACTED | | | | |
| 39 | | Combined Heavy Up Markets, National Cable | REDACTED | | | | |
| 40 | | | | | | | |
| 41 | | | | | | | |
| 42 | | All reach, frequency and impression numbers are reported against the A35+ demo | | | | | |

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
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Total Marketing

SMART SB
BALANCE Spreads

FY 2007
FY 2008
FY 2009
FY2010
FY2011
FY2012

REDACTED

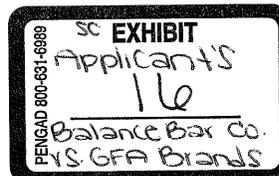
Total Trade Spend

SMART SB
BALANCE Spreads

FY 2007
FY 2008
FY 2009
FY2010
FY2011
FY2012

REDACTED

REDACTED



Shoprite 11/21

One Place. Your Place. For Dairy Products.

Great Anytime...
 Florida's Natural Premium Juice
 2 for \$5

Florida's Natural

Land O Lakes
 CoffeeMate Creamers
 2.49 ⁹⁹ ₅₀

Land O Lakes
 Hard & Soft
 2.99

Turkey Hill
 Egg Nogg
 3.99

Minute Maid
 Orange Juice
 1.99

Turkey Hill
 Iced Tea
 3.95

Minute Maid
 Peach or Blue
 1.99

Land O Lakes
 Butter Quarters
 2.95

England's Best Eggs
 2.99

Normel
 Black Label Bacon
 2.49

Shedite
 1% Milk
 3.29

Buyer
 Pork Roll
 1.49

Butterball
 Turkey Bacon
 2.93

Breakstone's
 Whipped Butter
 1.99

Simply Potatoes
 2.94

Normel
 Popcorn
 2.99

Smart Balance
 Spread
 2.79

Shedite
 Cottage Cheese
 1.99

Osco Mayer
 Soft Shaved Mints
 3.79 ⁵⁰

Country Cook
 Softroll
 2.96

Breyers
 Instant
 10.59 ⁹⁹

Axbrand
 Fat Free Instant
 10.95 ⁹⁹

Pony & Marenzeller
 3.99 ⁹⁹ _{1.12}

Pony & Marenzeller
 4.99 ⁹⁹ _{1.47}

ONE PLACE. YOUR PLACE FOR DAIRY.

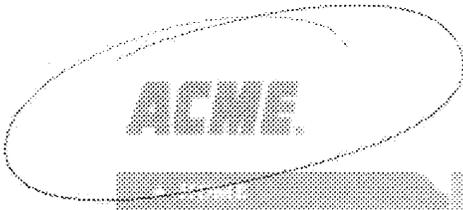
Fresh Ingredients...
 ShopRite Cream Cheese
 .69 ⁹⁹ ₃₀

Cracker Barrel
 2.49 ⁹⁹ _{1.30}

Pillsbury
 Grande Biscuits
 3.95

EXHIBIT
 Applicant's
 17
 Balance Bar Co.
 vs. GFA Brands

ACME 11/21/08



Zip Code: 07012
November 21, 2008

contact us

Store locator

SuperCard

Home > Find Savings > weekly ads online > Dairy >

Ad Categories

Choose One

Browse Brands

Choose One

Available Ads

Choose One

Ad Shopping List

You have 0 items on your Shopping List

Location:

Specials valid at the ACME located at:
467 Allwood Street
Clifton, NJ 07012
Tel: 973-594-0550
(change area)
Driving Directions
View All Weekly Ad Items

Survey

Holiday Planning Survey

Now showing 37-45 of 92 items

<< prev Items 37-45

Show me: Click Here for Sub-Categories

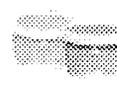
Sort by: Price



CARD PRICE: 2 for \$5 thru Dec 4



CARD PRICE: 2 for \$5 thru Nov 27



CARD PRICE: 2 for \$5 thru Nov 27

Mission Tortillas Whips
15 oz. Pkg.

Ferro Acid Cottage Cheese
16 oz. Pkg., Select Varieties

Ferro Acid Cottage Cheese
16 oz. Pkg., Select Varieties

Add to Printable List

Add to Printable List

Add to Printable List



CARD PRICE: 2 for \$5 thru Dec 4



CARD PRICE: 2 for \$5 thru Dec 4



CARD PRICE: 2 for \$5 thru Dec 4

Smart Balance Buttery Spread
8-15 oz., Select Varieties

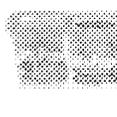
Smart Balance Margarine
8-15 oz., Select Varieties

Wild Harvest Sour Cream
16 oz.

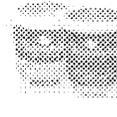
Add to Printable List

Add to Printable List

Add to Printable List



CARD PRICE: 2 for \$5 thru Dec 4



CARD PRICE: 2.79 thru Dec 4



CARD PRICE: 2.79 thru Dec 4

Wisfride Cheese Spread Cups
7-8 oz., Found in Dairy Department

Friendship Cottage Cheese
16 oz., Select varieties

ACME Grated Parme Cheese
8 oz., Select Varieties

Add to Printable List

Add to Printable List

Add to Printable List

Now showing 37-45 of 92 items

<< prev Items 37-45

A&P

Prices Valid
11/21/08-11/27/08

Browse Mode: Plain | HTML | Text Only

Choose view:



1 2 3 4 5 6 7 8 9 10



158

No items in your list

- Bakery (31)
- Beer/Wine/Spirits (1)
- Dairy (43)
- Eggs (42)
- Floral (5)
- Frozen (38)
- Grocery (154)
- Health & Beauty (69)
- Home (70)
- Meat (59)
- Pet Products (4)
- Produce (31)
- Seafood (22)



AP Health and Beauty Specials



AP In-Store Fresh Tab



AP Live Better Wellness Savings

TOP OFF YOUR HOLIDAY WORTHWHILE SAVINGS!

NEED SAVINGS YOU NEED FOR Happy Thanksgiving!

Florida's Natural Premium Orange Juice
 2 \$6
 SAVE UP TO \$1.99 ON 2

SARGENTO Shredded Cheese
 2 \$4
 SAVE UP TO \$4.58 ON 2

Hot Pockets or Lean Pockets
 5 \$10
 SAVE UP TO \$9.95 ON 5

Handwritten note: Cream Cheese is \$1.00

Foodtown Thanksgiving AD 11/23

Fresh Dairy

NATIONAL BRAND QUALITY
at lower prices!

8 oz. Pkg.
Regular or Reduced Fat
Foodtown Cream Cheese
CLUB CARD PRICE
99¢

8 oz. Pkg.
Assorted Varieties
Foodtown Shredded Cheese
CLUB CARD PRICE
2 \$4

3 Lb. Cont.
Whole Milk or Part-Skim
Foodtown Ricotta Cheese
\$3.99

16 oz. Pkg.
Yellow or White
Foodtown American Singles
\$3.69

8 oz. Pkg. Assorted Varieties,
Mild or Jack or
Foodtown Cheddar Cheese Sticks
2 \$5

1 Lb. Pkg.
Foodtown Margarine Quarters
3 \$3

1 Lb. Pkg.
Whole Milk or Part-Skim
Polly-O Mozzarella Cheese
CLUB CARD PRICE
\$3.49

3 Lb. Cont.
Whole Milk or Part-Skim
Polly-O Ricotta Cheese
\$5.99

16 oz. Pkg. Assorted Varieties,
Light or Original
Dannon Activia Yogurt 4 Pack
\$2.79

16-18.5 oz. Pkg.
Assorted Varieties,
(Excludes Holiday Varieties)
Pillsbury
Ready To Bake! Cookies
2 \$6

64 oz. Carton,
Assorted Varieties
Tropicana Fruit Beverage
3 \$5

32 oz. Carton,
Assorted Varieties
Land O Lakes Half & Half
2 \$6

7 oz. Cont.
Smart Balance Cream Cheese Spread
CLUB CARD PRICE
\$1.99

16 oz. Cont.
Assorted Varieties
International Delight Creamers
CLUB CARD PRICE
5 \$5

64 oz. Carton,
Assorted Varieties,
Grapefruit or
Florida's Natural Orange Juice
CLUB CARD PRICE
2 \$6

64 oz. Carton, Assorted Varieties,
Grapefruit or
Tropicana Pure Premium Orange Juice
2 \$7

22 oz. Cont.
Assorted Varieties
Kozy Shack Pudding
\$2.99

8-10 oz. Pkg. Assorted Varieties,
Soft or Crisp
Cracker Barrel Cheese Chunks
2 \$7

32 oz. Cont.
Assorted Varieties
Coffee-mate Unflavored Creamer
\$2.99

48 oz. Pkg.
Fudge or
Nestle Chocolate Chip Cookie Dough
\$4.99

SAVE UP TO \$1.50
\$1.13 1/2 oz. Pkg. Assorted Varieties,
Common Rolls or
Pillsbury Crescent Rolls
CLUB CARD PRICE
BUY 5 \$1 FREE

64 oz. Carton, Assorted Varieties,
Restoring Special Request
With Omega 3
Farmland Skim Plus Milk
\$3.69

5 oz. Cont.
Assorted Varieties
Breyers Smart! Yogurt
CLUB CARD PRICE
10 \$5

19 oz. Cont.
Grapefruit, Apple or
Simply Premium Orange Juice
2 \$7

60-64 oz. Carton,
Assorted Varieties
Cracker Barrel
2 \$7

32 oz. Carton
Eggland's Best Extra Large Eggs
\$2.99

11 oz. Pkg.
Pillsbury Pie Crusts
\$2.99

Organic or All-Natural Products for a Healthier Lifestyle
(Available at select locations)

Bear Naked Granola
12 oz.
2 FOR \$8
Save up to \$1.98 on 2 with your

Cascadian Farm Organic Cereal or Granola Bars
6.2 to 17 oz.
3 FOR \$9.99
Save up to \$4.08 on 3 with your

Fuze
18.5 oz.
10 FOR \$10
Save up to \$6.90 on 10 with your

Frito Lays Natural Snacks
8 to 9 oz., selected varieties
3⁴⁹ ea.
Save up to 50¢ ea. with your

Glaceau Vitamin Water
12 oz. 4 pk.
2 FOR \$7
Save up to 98¢ on 2 with your

Kim & Scott's All Natural Gourmet Pretzels
14 or 16 oz.
5⁴⁹ ea.
Save up to 60¢ ea. with your

Helen's Kitchen Organic Frozen Meals 9 or 11.5 oz.
2 FOR \$6
Save up to \$1.98 on 2 with your

Nature's Basket Organic Milk
Gallon, 2% or Fat Free
5⁴⁹ ea.
Save up to 20¢ ea. with your

Nature's Basket Organic Apple Sauce
6 pk. or 25 oz. Jar
2¹⁹ ea.

Nature's Basket Organic Baby Food
2.5 or 4 oz., selected varieties
20 FOR \$11
Save up to 40¢ on 20 with your

DAIRY Dairy

Yoplait Cups Original or Whips Yogurt
4 or 6 oz., selected varieties
20 FOR \$10
Save up to \$3.33 on 20

Kraft Philadelphia Brick Cream Cheese
8 oz., selected varieties
8 FOR \$10
Save up to \$9.12 on 8 with your

Coffee-Mate Flavored Creamers
32 oz., selected varieties
2 FOR \$6
Save up to \$1.18 on 2 with your

Sargento Shredded Cheese
7 or 8 oz.
4 FOR \$10
Save up to \$5.16 on 4 with your

Pillsbury Refrigerated Pie Crusts
15 oz.
2 FOR \$5
Save up to 98¢ on 2 with your

Dannon Activa Yogurt or DanActive Drinkable Yogurt
4 Packs Regular or Light
2 FOR \$4
Save up to \$1.58 on 2 with your

Parkay Spread or Fleischmann's Quarters
13 to 16 oz., selected varieties
4 FOR \$7
Save up to 56¢ on 4 with your

Heluva Good Chunk Cheese
8 oz.
4 FOR \$10
Save up to \$1.16 on 4 with your

Frigo Cheeseheads String Cheese
24 oz.
6⁴⁹ ea.
Save up to 70¢ ea. with your

Smart Balance Spread or Butter Blend
13 to 16 oz., selected varieties
2 FOR \$5
Save up to \$2.58 on 2 with your

DAIRY Frozen

Stouffer's Family Size or Easy Express Entrees
28 to 40 oz., selected varieties
6²⁹ ea.
Save up to \$2.00 ea. with your

Lean Cuisine Entrees
5.25 to 11.5 oz., selected varieties
5 FOR \$10
Save up to \$8.95 on 5 with your

Aunt Jemima Pancakes or French Toast
12.5 to 14.5 oz.
5 FOR \$10
Save up to \$4.95 on 5 with your

Hot or Lean Pockets
8.5 to 10 oz.
5 FOR \$10
Save up to \$2.50 on 5 with your

Giant Eagle Steam in Bag Vegetables
12 oz., selected varieties
8 FOR \$10
Save up to \$1.12 on 8 with your

T.G.I. Friday's or Poppers Snacks
7.6 to 14 oz.
3 FOR \$9
Save up to \$3.27 on 3 with your

Giant Eagle Orange Juice
12 oz.
5 FOR \$10
Save up to \$1.45 on 5 with your

Marie Callender's Meals
12 to 21 oz., selected varieties
3 FOR \$9
Save up to \$1.50 on 3 with your

Giant Eagle Tater Treats, Hashbrowns or Fries
64 or 80 oz., selected varieties
2 FOR \$10
Save up to 98¢ on 2 with your

Drunstick 4 ct. or Eskimo Pie Snack Bars 12 ct.
2 FOR \$6
Save up to \$3.98 on 2 with your



20 for

T. MARZETTI
Salad Dressing
Asst. Varieties
15 oz.

Low Fat
32 oz.

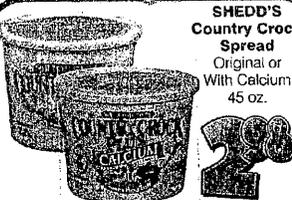
25 for

HALF GALE

• Fat Free • Chocolate
• Original
Asst. Flavors
6.5-7 oz.



23 for



2 for

SHEDD'S
Country Crock
Spread
Original or
With Calcium
45 oz.



25 for

NESTLE
Cookie Dough
Asst. Varieties
16-16.5 oz.



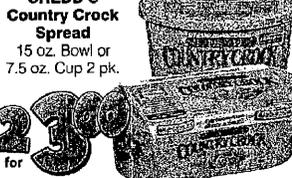
25 for

DANNON
Yogurt
Asst. Varieties
32 oz.



28 for

PROMISE
ACTIV
Super Shots
Strawberry
or Peach
4 pk.



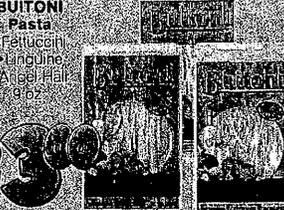
23 for

SHEDD'S
Country Crock
Spread
15 oz. Bowl or
7.5 oz. Cup 2 pk.



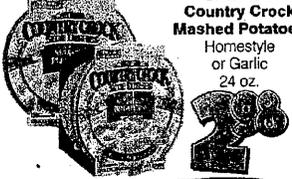
23 for

SUNNY
DELIGHT
Citrus Punch
California Blend
or Original
64 oz.



23 for

BUITONI
Pasta
• Fettuccine
• Rigatoni
• Angel Hair
16 oz.



2 for

SHEDD'S
Country Crock
Mashed Potatoes
Homestyle
or Garlic
24 oz.



2 for

GREAT LAKES
American Cheese
Singles
12 oz.



25 for

SMART
BALANCE
Spread or Spray
Asst. Varieties
8-15 oz.



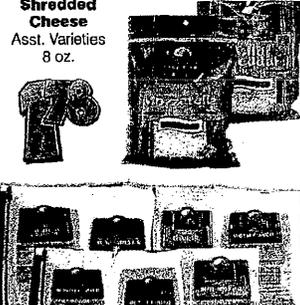
25 for

SMART
BALANCE
Butter Blend
1/4 lb. Quarters



2 for

GRANDMA'S Salads
• Potato • Coleslaw
• Macaroni
Asst. Types 16 oz.



2 for

GREAT LAKES
Shredded
Cheese
Asst. Varieties
8 oz.



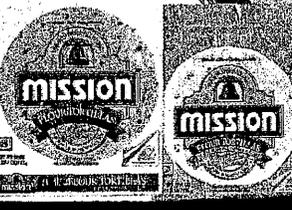
2 for

STELLA
Crumbled Cheese
• Gorgonzola
• Blue Cheese
• Light
Blue Cheese
6 oz.



2 for

PARKAY
Margarine
Soft Bowl
13 oz.
• Stick
Quarters
1 lb.



2 for

MISSION

Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

From:
Sent:
To:
Cc:
Subject:
Attachments:

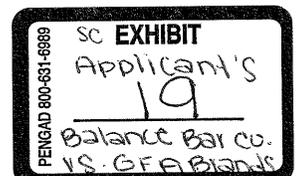
REDACTED

REDACTED

Thanks,
Courtney

Courtney Noles
TBC Advertising, Inc.
900 S. Wolfe Street
Baltimore, MD 21231
p 410.986.1312
f 410.986.1299

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SMART ♥ BALANCE

2008 Baltimore Running Festival Post-Race Analysis



October 17, 2008

SMART ♥ BALANCE INC.



Baltimore Running Festival Overview

Sponsorship Elements:

REDACTED



HIGHLY CONFIDENTIAL

GFASB009742

SMART BALANCE INC.



Creative Elements

REDACTED

HIGHLY CONFIDENTIAL

GFASB009743

SMART ♥ BALANCE INC.



Health and Fitness Expo

Thursday Oct 9 and Friday Oct 10 9am-9pm

REDACTED

REDACTED

HIGHLY CONFIDENTIAL

GFASB009744

SMART ♥ BALANCE INC.



Celebration Village

Saturday Oct 11 8am-3pm

REDACTED

REDACTED

HIGHLY CONFIDENTIAL

GFASB009745

SMART  BALANCE INC.



Baltimore Running Festival Net Metrics

REDACTED

REDACTED

HIGHLY CONFIDENTIAL

GFASB009746

SMART ♥ BALANCE INC.



REDACTED

REDACTED

HIGHLY CONFIDENTIAL

GFASB009747

SMART  BALANCE INC.



REDACTED

HIGHLY CONFIDENTIAL

GFASB009748

SMART ♥ BALANCE INC.

TBIC

REDACTED

HIGHLY CONFIDENTIAL

GFASB009749

SMART BALANCE INC.



Opposition Nos. 91196954 and 91197748
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Offered by Applicant GFA Brands, Inc.

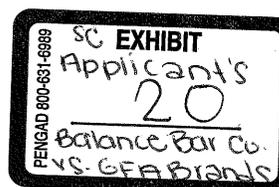
From: Bill Hooper <bhooper@smartbalance.com>
Sent: Tuesday, November 24, 2009 2:05 PM
To: 'Kelly Miano'; 'Jack Konzelmann'; 'Al Gever'; 'Don Perella';
gmandigo@smartbalance.com; hseiferas@smartbalance.com;
csacco@smartbalance.com; dmccarty@smartbalance.com;
dprimozich@smartbalance.com; gvenner@smartbalance.com;
jmintz@smartbalance.com; kmessick@smartbalance.com;
mgolderman@smartbalance.com; shughes@smartbalance.com;
tschulke@smartbalance.com; 'William Keane'; 'Sandra Snyder';
bhitt@smartbalance.com; 'Brett Meltzer'; 'Howard Lazar'; 'Jeff Scroggins'; 'Jerry Edel';
'Nicole Perraut'; 'Joe Gancio'; mlamendola@smartbalance.com; 'Sam Key';
mcalderoni@smartbalance.com; pdray@smartbalance.com; 'Rich McWilliams'; 'Austin
Jacobus'; 'Bob Gluck'; ndorce@smartbalance.com; kmessick@smartbalance.com;
lfleming@smartbalance.com; 'Neal Gabriel'; 'FRED WEBSTER'; 'Sheryl Marchetti';
jzavec@smartbalance.com; 'Noel Ebrahim'; GBuergler@smartbalance.com; 'Daniel
Curci'; 'TJ McIntyre'; 'Brendan Schulke'; 'Joan Dippolito'; 'Connie McGinty'; 'Fran
Einhorn'
Cc: 'Linda DiJohn'; 'Kaitlin Kenny'; 'Tammi Hancock'
Subject: RE: Smart Balance Coverage

Good work kelly and pr team

Bill Hooper
105 Cypress Landing
Jacksonville FL 32259
904-230 -7596

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From: Kelly Miano [mailto:kmiano@smartbalance.com]
Sent: Tuesday, November 24, 2009 1:40 PM
To: 'Jack Konzelmann'; 'Al Gever'; 'Don Perella'; gmandigo@smartbalance.com; hseiferas@smartbalance.com;
csacco@smartbalance.com; dmccarty@smartbalance.com; dprimozich@smartbalance.com; gvenner@smartbalance.com;
jmintz@smartbalance.com; kmessick@smartbalance.com; kmiano@smartbalance.com; mgolderman@smartbalance.com;
shughes@smartbalance.com; tschulke@smartbalance.com; 'William Keane'; 'Sandra Snyder'; bhitt@smartbalance.com;
'Brett Meltzer'; 'Howard Lazar'; 'Jeff Scroggins'; 'Jerry Edel'; 'Nicole Perraut'; 'Joe Gancio';
mlamendola@smartbalance.com; 'Sam Key'; mcalderoni@smartbalance.com; pdray@smartbalance.com; 'Bill Hooper';
'Rich McWilliams'; 'Austin Jacobus'; 'Bob Gluck'; ndorce@smartbalance.com; kmessick@smartbalance.com;
lfleming@smartbalance.com; 'Neal Gabriel'; 'FRED WEBSTER'; 'Sheryl Marchetti'; jzavec@smartbalance.com; 'Noel
Ebrahim'; GBuergler@smartbalance.com; 'Daniel Curci'; 'TJ McIntyre'; bhooper@smartbalance.com; 'Brendan Schulke';
Joan Dippolito; Connie McGinty; Fran Einhorn
Cc: 'Linda DiJohn'; Kaitlin Kenny; 'Tammi Hancock'
Subject: Smart Balance Coverage



Happy Thanksgiving All,

Below is a list of our most recent coverage. We're happy to report the Bestlife release was picked up by several outlets. In addition to many of our products being featured in numerous recipes, HeartRight, Popcorn, Cooking Spray and Peanut all received favorable reviews.

Thanks,

Kelly

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Masterful Mac 'n' Cheese
Recipe #398981

55 min
20 min prep

By: Sharon123

Nov 12, 2009

From the Sneaky Chef cookbook by Missy Chase Lapine. She says this is a nutritionally enhanced version of her stepmother's delicious recipe from Finland.

4 -6 servings
(change servings and units)

Ingredients

1/2 lb macaroni (preferably whole wheat)
1 1/2 cups milk
1/4-1/2 cup orange puree (My Take on Sneaky Orange Puree and or Sneaky Chef Make-Ahead White Puree)
1/2 teaspoon salt
2 cups grated colby cheese (or cheddar cheese)
Crunchy Topping Variation
1 cup whole grain cereal flake (like Wheaties or Total)
1/4 cup wheat germ, unsweetened
2 tablespoons grated parmesan cheese
2 tablespoons butter , diced into small pieces (or use **Smart Balance**)

1 Preheat oven to 375°F.

2 Butter a 9" square baking pan.

3 Bring a large pot of salted water to a boil over high heat. Add the macaroni and cook according to the package directions, until firm and slightly undercooked(8-10 minutes). Drain and set aside.

4 In a large bowl, whisk the milk with the orange puree and salt.(and white puree if using-if using both use 1/4 cup each). Put half the macaroni into the baking pan and top with half colby (or cheddar) cheese.

5 Next, layer with the rest of the macaroni, then pour the milk mixture over the top, finishing with the last of the cheese on top.

6 If using Crunchy Topping Variation, use a rolling pin to gently crush cereal in a sealed plastic bag. Or, you can quickly pulse the cereal in a food processor. Add wheat germ and Parmesan to the bag and shake to mix.

7 Sprinkle crumb mixture on top of macaroni and cheese and dot with butter.

8 Bake 30-35 minutes, or until golden and bubbling.

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Garlic Haricots Verts Amondine
Recipe #399520

20 min
10 min prep

By: Feeding my Family

Nov 16, 2009

This is a traditional Thanksgiving recipe in our house. It is a healthier alternative to green bean casserole. You can use regular green beans, but they will need to steam for an extra 2-3 minutes.

SERVES 6

Ingredients

2 tablespoons olive oil
1 tablespoon **Smart Balance** margarine
1 lb French haricots vert, trimmed
6 garlic cloves , thinly sliced 1/2 cup almonds, slivered
1/8 teaspoon sea salt fresh ground black pepper

Directions

- 1 Place the oil and margarine in a skillet over medium-low heat (low heat on a gas range) until melted.
- 2 Add the haricots verts, stir, and cover for 3 minutes. Add the sliced garlic, stir, and sauté for 3 more minutes. Add the remaining ingredients, stir, and sauté for the final 3 minutes.

REDACTED

Strawberry Scones
Recipe #399460

30 min
10 min prep

By: smellyvegetarian

Nov 16, 2009

These are oat-based, which makes the different from other strawberry scones on Zaar. The original recipe is from Prevention; see parentheses for their original amounts and the directions below for ingredients/instructions for an optional strawberry glaze.

SERVES 12

Ingredients

1 1/4 cups quick-cooking rolled oats
1 cup all-purpose flour
1/2 cup whole wheat pastry flour
2 teaspoons baking powder
1/2 teaspoon baking soda
1/4 teaspoon salt
1/8 cup sugar
1 teaspoon
2 tablespoons **Smart Balance** butter spread, cut into small pieces
1 egg
1/2 cup nonfat vanilla yogurt
1 tablespoon canola oil vanilla
2/3 cup strawberry , chopped

Directions

- 1 Preheat the oven to 400 degF Coat a baking sheet with no-stick spray.
- 2 In a large bowl, combine the oats, all-purpose flour, pastry flour, baking powder, baking soda, salt, and 1/8 cup of the sugar. Add the butter or margarine and cut into the flour using the back of a fork until the mixture resembles coarse meal.
- 3 In a small bowl, lightly beat together the egg, yogurt, oil, and vanilla. Add to the flour mixture, stirring with a fork just until the dough comes together. Add the strawberries and mix gently.

4 Transfer the dough to a floured surface. Pat into an 8" circle; cut into 12 wedges. Place the wedges on the baking sheet. Brush with the egg white and sprinkle with the remaining 1 teaspoon sugar. Bake for 18-20 minutes, or until golden. Watch them carefully, as they will get crispy easily.

5 To make the strawberry-yogurt sauce: In a small bowl, stir together 2/3 c yogurt, 1 T jam, and 1 T sugar until smooth. Stir in 2/3 c strawberries.

6 Serve with the scones.

REDACTED

THE PERFECT ROAST TURKEY 1 onion, coarsely chopped

2 carrots, peeled and coarsely chopped

2 celery stalks, coarsely chopped

Fresh herbs such as parsley, sage, rosemary OR thyme

1 (12- to 14-pound) turkey

1 tablespoon olive oil

1 teaspoon kosher salt

1 teaspoon fresh pepper

Spray a large roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor.

Rinse and pat turkey dry with paper towels. Place a rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey on rack breast side up. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil. Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue roasting, until turkey reaches 165 degrees F. or until juices run clear, not pink, when turkey leg is pierced. Remove from oven and let turkey stand 20 minutes before removing skin and carving into slices. Serve on a platter garnished with fresh herbs and fresh cranberries. Serve with Apricot Glaze (recipe follows). Makes 8 to 10 servings, with a few leftovers. (without skin 4 ounces white meat is 160 calories; 4 ounces dark meat is 200 calories).

APRICOT GLAZED TURKEY BREAST 2 celery stalks, coarsley chopped

1 (3- to 4-pound) rolled boneless fresh turkey breast (do not use injected turkey)
2 teaspoons olive oil
1 teaspoon fresh ground pepper

Apricot Glaze (recipe follows)

Spray a roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor. Rinse and pat turkey breast dry with paper towels.

Place rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey breast on rack. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil.

Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue cooking 55 minutes for a 3-pound breast or 1 hour and 25 minutes for a 4-pound breast.

Remove from oven when thermometer reads 165 degrees F. in thickest part. Let turkey stand 20 minutes before slicing to keep juices in. Remove skin and discard. Slice and serve with Apricot Glaze. Makes 10 servings (depending on size of breast), about 160 calories EACH.

APRICOT GLAZE 1/2 cup fruit only, no sugar apricot preserves (fruit only preserves)

2 tablespoons chopped jalapeno chiles
1/8 cup red wine vinegar
2 tablespoons Dijon mustard
1 tablespoon honey
1 teaspoon chopped garlic
1 teaspoon chopped fresh rosemary OR 1/2 teaspoon dried
1/2 teaspoon salt
1/2 teaspoon pepper

Whisk all ingredients in a medium glass mixing bowl. Microwave glaze on high power 3 minutes, until boiling. Brush glaze on roast turkey, chicken or pork. Can also be used as a marinade for chicken, or served as a sauce on the side. Store any leftovers in refrigerator. Makes 12 (2-tablespoon) servings, about 20 calories EACH.

NOTE: If used as a marinade, use 1/2 as marinade and the other half as a sauce on the side. PEAR-CRANBERRY

SAUCE 1 (12-ounce) package fresh cranberries
1 cup water
1/3 cup sugar
2 ripe pears, peeled, cored and diced into bite-size pieces
1/2 teaspoon ground cinnamon
1 teaspoon vanilla

In a medium saucepan, combine cranberries, water, sugar and pears. Cook over medium heat until mixture is boiling, then reduce heat to medium low and continue cooking until berries pop, about 10 minutes.

Remove from heat; stir in cinnamon and vanilla. Refrigerate, covered, until serving time. Makes 8 (1/3-cup) servings, about 65 calories EACH.

CAULIFLOWER PUREE 1 pound cauliflower, chopped (discard large stems)

2/3 cup fat-free, reduced-sodium organic chicken broth
1 teaspoon sea salt
1/4 cup fat-free half-and-half
1 tablespoon no trans fat margarine (such as **Smart Balance** or I Can't Believe It's Not Butter)
Freshly ground black pepper

Steam cauliflower with chicken broth, garlic and salt in microwave oven on high power 7 to 8 minutes, until tender.

Puree in food processor or mash by hand with potato masher. Add half-and-half and margarine and season with black pepper. Makes 4 servings about 50 calories EACH.

FARMER'S MARKET SALAD WITH ROASTED BUTTERNUT SQUASH 1 (2-pound) butternut squash, peeled, seeded and cut into 1/2-inch cubes OR 4 cups prepared, peeled butternut squash cubes (available in produce section of markets)

Pinch red pepper flakes
Sea salt
2 tablespoons orange juice
2 tablespoons pomegranate juice
1 tablespoon walnut OR olive oil
1 tablespoon water
1/2 teaspoon fresh black pepper
1 (7-ounce) bag baby arugula
1/4 cup toasted, chopped walnuts
1/2 cup pomegranate seeds OR dried cranberries
3 tablespoons pomegranate molasses (available at Middle Eastern markets; see Note)

Toss squash cubes with 1 tablespoon olive oil, red pepper flakes and 1/2 teaspoon sea salt. Spread on a foil-lined baking sheet. Roast in a preheated 400-degree oven about 30 to 40 minutes, until tender and golden. Set aside to cool.

Whisk together orange and pomegranate juices, walnut oil, water, 1/2 teaspoon sea salt and pepper in a small bowl. Set aside until serving time.

When ready to serve, toss arugula with dressing. Place arugula on a platter or in bowl and arrange butternut squash on top. Sprinkle salad with walnuts and pomegranate seeds and drizzle with pomegranate molasses. Serve immediately. Makes 6 servings, about 195 calories EACH.

NOTE: If pomegranate molasses is not available, place 1 cup pomegranate juice in a saucepan and reduce over low heat 20 minutes, until thick and syrupy. Watch carefully to avoid burning. LIME GLAZED ROASTED YAMS 2 yams, peeled and cut into 1-inch pieces

2 tablespoons light butter OR no trans fat margarine
2 tablespoons brown sugar
1 tablespoon lime juice
1/2 teaspoon kosher salt

Spray a 9x13 baking dish with canola oil spray. Add yam pieces and dot with butter. Bake in a preheated 350-degree oven 20 minutes, turning once after 10 minutes to coat with butter. Remove from oven, sprinkle with brown sugar, lime juice and salt. Return to oven and bake 20 minutes longer, until lightly browned. Makes 6 servings, about 140 calories EACH.

LITE PUMPKIN GINGER CHEESECAKE 1 1/2 cups gingersnap crumbs (blend gingersnap cookies in food processor)

3 tablespoons no trans fat margarine, melted
3 (8-ounce) packages reduced-fat (Neufchatel) cream cheese (DO NOT use fat free)
1 3/4 cups solid pumpkin
1 cup packed brown sugar
1 tablespoon pumpkin pie spice
1/4 teaspoon ground cloves
1 tablespoon vanilla
3/4 cup egg substitute (such as Egg Beaters)

Place gingersnap crumbs in a bowl. Add melted margarine to crumbs; mix until blended. Press crumbs into a 9-inch springform pan sprayed with nonstick spray.

With an electric mixer or in a food processor, blend cream cheese until smooth. Add pumpkin, brown sugar, pumpkin pie spice, cloves and vanilla. Blend well. Add egg substitute slowly with mixer on low speed.

Pour cream cheese filling into prepared crust. Sprinkle top lightly with additional pumpkin pie spice. Bake in a preheated 325-degree oven 1 1/2 hours or until set.

Cool and refrigerate at least 4 hours or until firm. Garnish with Fat Free Reddi-wip. Serve immediately. Makes 12 servings, about 300 calories EACH.

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THE PERFECT ROAST TURKEY 1 onion, coarsely chopped

2 carrots, peeled and coarsely chopped

2 celery stalks, coarsely chopped

Fresh herbs such as parsley, sage, rosemary OR thyme
1 (12- to 14-pound) turkey
1 tablespoon olive oil
1 teaspoon kosher salt
1 teaspoon fresh pepper

Spray a large roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor.

Rinse and pat turkey dry with paper towels. Place a rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey on rack breast side up. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil. Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue roasting, until turkey reaches 165 degrees F. or until juices run clear, not pink, when turkey leg is pierced. Remove from oven and let turkey stand 20 minutes before removing skin and carving into slices. Serve on a platter garnished with fresh herbs and fresh cranberries. Serve with Apricot Glaze (recipe follows). Makes 8 to 10 servings, with a few leftovers. (without skin 4 ounces white meat is 160 calories; 4 ounces dark meat is 200 calories).

APRICOT GLAZED TURKEY BREAST 2 celery stalks, coarsley chopped

1 (3- to 4-pound) rolled boneless fresh turkey breast (do not use injected turkey)
2 teaspoons olive oil
1 teaspoon fresh ground pepper

Apricot Glaze (recipe follows)

Spray a roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor. Rinse and pat turkey breast dry with paper towels.

Place rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey breast on rack. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil.

Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue cooking 55 minutes for a 3-pound breast or 1 hour and 25 minutes for a 4-pound breast.

Remove from oven when thermometer reads 165 degrees F. in thickest part. Let turkey stand 20 minutes before slicing to keep juices in. Remove skin and discard. Slice and serve with Apricot Glaze. Makes 10 servings (depending on size of breast), about 160 calories EACH.

APRICOT GLAZE 1/2 cup fruit only, no sugar apricot preserves (fruit only preserves)

2 tablespoons chopped jalapeno chiles
1/8 cup red wine vinegar
2 tablespoons Dijon mustard
1 tablespoon honey
1 teaspoon chopped garlic
1 teaspoon chopped fresh rosemary OR 1/2 teaspoon dried
1/2 teaspoon salt
1/2 teaspoon pepper

Whisk all ingredients in a medium glass mixing bowl. Microwave glaze on high power 3 minutes, until boiling. Brush glaze on roast turkey, chicken or pork. Can also be used as a marinade for chicken, or served as a sauce on the side. Store any leftovers in refrigerator. Makes 12 (2-tablespoon) servings, about 20 calories EACH.

NOTE: If used as a marinade, use 1/2 as marinade and the other half as a sauce on the side. PEAR-CRANBERRY SAUCE 1 (12-ounce) package fresh cranberries
1 cup water
1/3 cup sugar
2 ripe pears, peeled, cored and diced into bite-size pieces
1/2 teaspoon ground cinnamon

1 teaspoon vanilla

In a medium saucepan, combine cranberries, water, sugar and pears. Cook over medium heat until mixture is boiling, then reduce heat to medium low and continue cooking until berries pop, about 10 minutes.

Remove from heat; stir in cinnamon and vanilla. Refrigerate, covered, until serving time. Makes 8 (1/3-cup) servings, about 65 calories EACH.

CAULIFLOWER PUREE 1 pound cauliflower, chopped (discard large stems)

2/3 cup fat-free, reduced-sodium organic chicken broth

1 teaspoon sea salt

1/4 cup fat-free half-and-half

1 tablespoon no trans fat margarine (such as **Smart Balance** or I Can't Believe It's Not Butter)

Freshly ground black pepper

Steam cauliflower with chicken broth, garlic and salt in microwave oven on high power 7 to 8 minutes, until tender.

Puree in food processor or mash by hand with potato masher. Add half-and-half and margarine and season with black pepper. Makes 4 servings about 50 calories EACH.

FARMER'S MARKET SALAD WITH ROASTED BUTTERNUT SQUASH 1 (2-pound) butternut squash, peeled, seeded and cut into 1/2-inch cubes OR 4 cups prepared, peeled butternut squash cubes (available in produce section of markets)

Pinch red pepper flakes

Sea salt

2 tablespoons orange juice

2 tablespoons pomegranate juice

1 tablespoon walnut OR olive oil

1 tablespoon water

1/2 teaspoon fresh black pepper

1 (7-ounce) bag baby arugula

1/4 cup toasted, chopped walnuts

1/2 cup pomegranate seeds OR dried cranberries

3 tablespoons pomegranate molasses (available at Middle Eastern markets; see Note)

Toss squash cubes with 1 tablespoon olive oil, red pepper flakes and 1/2 teaspoon sea salt. Spread on a foil-lined baking sheet. Roast in a preheated 400-degree oven about 30 to 40 minutes, until tender and golden. Set aside to cool.

Whisk together orange and pomegranate juices, walnut oil, water, 1/2 teaspoon sea salt and pepper in a small bowl. Set aside until serving time.

When ready to serve, toss arugula with dressing. Place arugula on a platter or in bowl and arrange butternut squash on top. Sprinkle salad with walnuts and pomegranate seeds and drizzle with pomegranate molasses. Serve immediately. Makes 6 servings, about 195 calories EACH.

NOTE: If pomegranate molasses is not available, place 1 cup pomegranate juice in a saucepan and reduce over low heat 20 minutes, until thick and syrupy. Watch carefully to avoid burning. **LIME GLAZED ROASTED YAMS** 2 yams, peeled and cut into 1-inch pieces

2 tablespoons light butter OR no trans fat margarine

2 tablespoons brown sugar

1 tablespoon lime juice

1/2 teaspoon kosher salt

Spray a 9x13 baking dish with canola oil spray. Add yam pieces and dot with butter. Bake in a preheated 350-degree oven 20 minutes, turning once after 10 minutes to coat with butter. Remove from oven, sprinkle with brown sugar, lime juice and salt. Return to oven and bake 20 minutes longer, until lightly browned. Makes 6 servings, about 140 calories EACH.

LITE PUMPKIN GINGER CHEESECAKE 1 1/2 cups gingersnap crumbs (blend gingersnap cookies in food processor)

3 tablespoons no trans fat margarine, melted
3 (8-ounce) packages reduced-fat (Neufchatel) cream cheese (DO NOT use fat free)
1 3/4 cups solid pumpkin
1 cup packed brown sugar
1 tablespoon pumpkin pie spice
1/4 teaspoon ground cloves
1 tablespoon vanilla
3/4 cup egg substitute (such as Egg Beaters)

Place gingersnap crumbs in a bowl. Add melted margarine to crumbs; mix until blended. Press crumbs into a 9-inch springform pan sprayed with nonstick spray.

With an electric mixer or in a food processor, blend cream cheese until smooth. Add pumpkin, brown sugar, pumpkin pie spice, cloves and vanilla. Blend well. Add egg substitute slowly with mixer on low speed.

Pour cream cheese filling into prepared crust. Sprinkle top lightly with additional pumpkin pie spice. Bake in a preheated 325-degree oven 1 1/2 hours or until set.

Cool and refrigerate at least 4 hours or until firm. Garnish with Fat Free Reddi-wip. Serve immediately. Makes 12 servings, about 300 calories EACH.

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THE PERFECT ROAST TURKEY 1 onion, coarsely chopped

2 carrots, peeled and coarsely chopped
2 celery stalks, coarsely chopped
Fresh herbs such as parsley, sage, rosemary OR thyme
1 (12- to 14-pound) turkey
1 tablespoon olive oil
1 teaspoon kosher salt
1 teaspoon fresh pepper

Spray a large roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor.

Rinse and pat turkey dry with paper towels. Place a rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey on rack breast side up. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil. Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue roasting, until turkey reaches 165 degrees F. or until juices run clear, not pink, when turkey leg is pierced. Remove from oven and let turkey stand 20 minutes before removing skin and carving into slices. Serve on a platter garnished with fresh herbs and fresh cranberries. Serve with Apricot Glaze (recipe follows). Makes 8 to 10 servings, with a few leftovers. (without skin 4 ounces white meat is 160 calories; 4 ounces dark meat is 200 calories).

APRICOT GLAZED TURKEY BREAST 2 celery stalks, coarsley chopped

1 (3- to 4-pound) rolled boneless fresh turkey breast (do not use injected turkey)
2 teaspoons olive oil
1 teaspoon fresh ground pepper

Apricot Glaze (recipe follows)

Spray a roasting pan with nonstick spray. Add roughly chopped vegetables and herbs to bottom of pan to infuse turkey with flavor. Rinse and pat turkey breast dry with paper towels.

Place rack in bottom of pan on top of vegetables (if you do not have rack, make a foil snake, about an inch thick and spiral it in the bottom of the pan). Place turkey breast on rack. Brush with oil, season with salt and pepper. Insert meat thermometer in thickest part of thigh. Tent loosely with foil.

Place in a preheated 500-degree oven 25 minutes, reduce oven temperature to 325 degrees F and continue cooking 55 minutes for a 3-pound breast or 1 hour and 25 minutes for a 4-pound breast.

Remove from oven when thermometer reads 165 degrees F. in thickest part. Let turkey stand 20 minutes before slicing to keep juices in. Remove skin and discard. Slice and serve with Apricot Glaze. Makes 10 servings (depending on size of breast), about 160 calories EACH.

APRICOT GLAZE 1/2 cup fruit only, no sugar apricot preserves (fruit only preserves)

2 tablespoons chopped jalapeno chiles
1/8 cup red wine vinegar
2 tablespoons Dijon mustard
1 tablespoon honey
1 teaspoon chopped garlic
1 teaspoon chopped fresh rosemary OR 1/2 teaspoon dried
1/2 teaspoon salt
1/2 teaspoon pepper

Whisk all ingredients in a medium glass mixing bowl. Microwave glaze on high power 3 minutes, until boiling. Brush glaze on roast turkey, chicken or pork. Can also be used as a marinade for chicken, or served as a sauce on the side. Store any leftovers in refrigerator. Makes 12 (2-tablespoon) servings, about 20 calories EACH.

NOTE: If used as a marinade, use 1/2 as marinade and the other half as a sauce on the side. PEAR-CRANBERRY

SAUCE 1 (12-ounce) package fresh cranberries
1 cup water
1/3 cup sugar
2 ripe pears, peeled, cored and diced into bite-size pieces
1/2 teaspoon ground cinnamon
1 teaspoon vanilla

In a medium saucepan, combine cranberries, water, sugar and pears. Cook over medium heat until mixture is boiling, then reduce heat to medium low and continue cooking until berries pop, about 10 minutes.

Remove from heat; stir in cinnamon and vanilla. Refrigerate, covered, until serving time. Makes 8 (1/3-cup) servings, about 65 calories EACH.

CAULIFLOWER PUREE 1 pound cauliflower, chopped (discard large stems)

2/3 cup fat-free, reduced-sodium organic chicken broth
1 teaspoon sea salt
1/4 cup fat-free half-and-half
1 tablespoon no trans fat margarine (such as **Smart Balance** or I Can't Believe It's Not Butter)
Freshly ground black pepper

Steam cauliflower with chicken broth, garlic and salt in microwave oven on high power 7 to 8 minutes, until tender.

Puree in food processor or mash by hand with potato masher. Add half-and-half and margarine and season with black pepper. Makes 4 servings about 50 calories EACH.

FARMER'S MARKET SALAD WITH ROASTED BUTTERNUT SQUASH 1 (2-pound) butternut squash, peeled, seeded and cut into 1/2-inch cubes OR 4 cups prepared, peeled butternut squash cubes (available in produce section of markets)

Pinch red pepper flakes
Sea salt
2 tablespoons orange juice
2 tablespoons pomegranate juice
1 tablespoon walnut OR olive oil
1 tablespoon water
1/2 teaspoon fresh black pepper
1 (7-ounce) bag baby arugula
1/4 cup toasted, chopped walnuts
1/2 cup pomegranate seeds OR dried cranberries
3 tablespoons pomegranate molasses (available at Middle Eastern markets; see Note)

Toss squash cubes with 1 tablespoon olive oil, red pepper flakes and 1/2 teaspoon sea salt. Spread on a foil-lined baking sheet. Roast in a preheated 400-degree oven about 30 to 40 minutes, until tender and golden. Set aside to cool.

Whisk together orange and pomegranate juices, walnut oil, water, 1/2 teaspoon sea salt and pepper in a small bowl. Set aside until serving time.

When ready to serve, toss arugula with dressing. Place arugula on a platter or in bowl and arrange butternut squash on top. Sprinkle salad with walnuts and pomegranate seeds and drizzle with pomegranate molasses. Serve immediately. Makes 6 servings, about 195 calories EACH.

NOTE: If pomegranate molasses is not available, place 1 cup pomegranate juice in a saucepan and reduce over low heat 20 minutes, until thick and syrupy. Watch carefully to avoid burning. LIME GLAZED ROASTED YAMS 2 yams, peeled and cut into 1-inch pieces

2 tablespoons light butter OR no trans fat margarine
2 tablespoons brown sugar
1 tablespoon lime juice
1/2 teaspoon kosher salt

Spray a 9x13 baking dish with canola oil spray. Add yam pieces and dot with butter. Bake in a preheated 350-degree

oven 20 minutes, turning once after 10 minutes to coat with butter. Remove from oven, sprinkle with brown sugar, lime juice and salt. Return to oven and bake 20 minutes longer, until lightly browned. Makes 6 servings, about 140 calories EACH.

LITE PUMPKIN GINGER CHEESECAKE 1 1/2 cups gingersnap crumbs (blend gingersnap cookies in food processor)

3 tablespoons no trans fat margarine, melted
3 (8-ounce) packages reduced-fat (Neufchatel) cream cheese (DO NOT use fat free)
1 3/4 cups solid pumpkin
1 cup packed brown sugar
1 tablespoon pumpkin pie spice
1/4 teaspoon ground cloves
1 tablespoon vanilla
3/4 cup egg substitute (such as Egg Beaters)

Place gingersnap crumbs in a bowl. Add melted margarine to crumbs; mix until blended. Press crumbs into a 9-inch springform pan sprayed with nonstick spray.

With an electric mixer or in a food processor, blend cream cheese until smooth. Add pumpkin, brown sugar, pumpkin pie spice, cloves and vanilla. Blend well. Add egg substitute slowly with mixer on low speed.

Pour cream cheese filling into prepared crust. Sprinkle top lightly with additional pumpkin pie spice. Bake in a preheated 325-degree oven 1 1/2 hours or until set.

Cool and refrigerate at least 4 hours or until firm. Garnish with Fat Free Reddi-wip. Serve immediately. Makes 12 servings, about 300 calories EACH.

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Almond and Soy Nut Power Bars

Submitted By: JDS8000

Prep Time: 25 Minutes

Cook Time: 15 Minutes

Ready In: 1 Hour 40 Minutes

Servings: 30

"Roasted soy nuts, almonds, and walnuts combine with flax seed in these tasty, home made bars."

INGREDIENTS:

1 1/2 cups rolled oats

1 cup blanched almonds

1 cup walnuts

1/2 cup soy nuts

2 cups crispy brown rice cereal

2 cups nonfat dry milk powder

1/2 cup wheat germ

1/2 cup raisins

1/2 cup miniature semisweet chocolate chips

1/3 cup flax seed meal

1 tablespoon ground cinnamon

1/2 teaspoon salt

4 egg whites

3/4 cup canola oil (such as **Smart Balance** (R)
) Omega)

1 cup honey

2 teaspoons vanilla extract

DIRECTIONS:

1. Preheat an oven to 325 degrees F (165 degrees C). Line a baking sheet with aluminum foil and spray with cooking spray.
2. Place the oats, almonds, walnuts, and soy nuts into a food processor. Pulse until finely ground; pour into a large mixing bowl. Whisk in the brown rice cereal, dry milk, wheat germ, raisins, chocolate chips, flax, cinnamon, and salt; set aside.
3. Beat the egg whites until frothy in a small bowl; stir in the canola oil, honey, and vanilla extract and pour into the dry mixture. Stir until evenly moistened and press into the prepared pan.
4. Bake in the preheated oven until the mixture is hot, 15 to 20 minutes. Remove the power bar mixture by lifting the foil out of the pan. Allow to cool slightly; remove the foil and cut into bars while still warm. Allow to cool completely on a wire rack before serving. Store in airtight container, or freeze in plastic snack bags.

REDACTED

Green-Tea Cupcakes

Rated:

Submitted By: muffin_girl

Prep Time: 25 Minutes

Cook Time: 20 Minutes

Ready In: 2 Hours

Servings: 12

"Delicate green tea cupcakes with a just a hint of almond."

INGREDIENTS:

1/4 cup butter

1/4 cup vegetable oil butter spread (such as

Smart Balance®)

1/2 cup granular no-calorie sucralose

sweetener (such as Splenda®)

1/2 cup white sugar

3 egg whites

1 teaspoon vanilla extract

1 teaspoon almond extract

1 1/2 cups cake flour

2 teaspoons baking powder

2 tablespoons green tea powder (matcha)

1/2 cup nonfat milk

DIRECTIONS:

1. Preheat an oven to 350 degrees F (175 degrees C). Grease 12 muffin cups, or line with paper muffin liners.
2. Beat the butter, vegetable oil butter spread, sweetener, and sugar with an electric mixer in a large bowl until light and fluffy. The mixture should be noticeably lighter in color. Add the room-temperature egg whites one at a time, allowing each egg to blend into the butter mixture before adding the next. Beat in the vanilla and almond extracts with the last egg. Combine cake flour, baking powder, and green tea powder in a small bowl. Pour in the flour mixture alternately with the milk, mixing until just incorporated. Pour the batter into prepared pan.
3. Bake in the preheated oven until a toothpick inserted into the center comes out clean, about 20 minutes. Cool in the pans for 10 minutes before removing to cool completely on a wire rack.

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Thanksgiving Side Dish: Apple Squash

Nov 12 2009

Thanksgiving is one of my favorite holidays because I love all the warm, savory dishes. This one has been in my family for years and it's sweet, creamy, and has a crunchy topping that reminds me of homemade mac and cheese. It's easy to prepare ahead of time, and is a great alternative to mashed potatoes or stuffing.

To see the recipe and find out how many calories are in one serving .

Recipe for Apple Squash
a family recipe
Ingredients

Bottom layer:
4 Cortland apples, peeled and sliced
1 1/2 tablespoons **Smart Balance** margarine

Middle layer:
8 cups butternut squash (about two whole), peeled, de-seeded, and diced
2 tablespoons **Smart Balance** margarine
2 teaspoons brown sugar
1/4 teaspoon salt
1/4 teaspoon pepper

Top layer:

2 cups fruit juice sweetened corn flakes, crushed
1/2 cup chopped pecans
2 teaspoons brown sugar
2 tablespoons **Smart Balance** margarine, melted

Directions

Preheat the oven to 350° F.

Heat two tablespoons of **Smart Balance** in a skillet and add the sliced apples. Cover and simmer for five minutes. Spread in bottom of a casserole dish.

Boil the butternut squash for 15 minutes.

Mash the squash with two tablespoons **Smart Balance**, two teaspoons brown sugar, salt, and pepper. Spread it on top of the apples.

Mix the two tablespoons of melted **Smart Balance** with the crushed corn flakes, two teaspoons brown sugar, and chopped pecans. Sprinkle on top of the squash.

Bake uncovered for 15 minutes. Serve warm and enjoy.

Makes 10 servings.

Print recipe with images [0] | without images [0]

Here's the nutritional info [1] for this Thanksgiving apple squash.

| | |
|---------------|------------------|
| Serving Size | 1/10 of the dish |
| Calories | 159.6 |
| Total Fat | 5.9 g |
| Saturated Fat | .6 g |
| Cholesterol | 0 mg |
| Sodium | 182.1 mg |
| Carbs | 28.2 g |
| Fiber | 3.9 g |
| Sugars | 10.7 g |
| Protein | 2.2 g |

If you have a healthy recipe to share, please post it in the Healthy Recipe [2] community group.

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APPLE PIE

Makes one 9-inch pie

If you choose to use fresh apples you must use a tart firm apple. Varieties such as golden delicious, Cortland, Braeburn, Spartan and Granny Smith are your best choices.

1-1/2 cans (20-ounce) sliced apples drained, or five to seven tart apples, peeled, cored, and thinly sliced

3/4-cup sugar (or use 1/2 sugar and 1/2 Splenda sugar substitute)

1/4-cup dark brown sugar (packed)

1 tablespoon flour

1/2-teaspoon cinnamon

Dash nutmeg

Dash salt

1 tablespoon lemon juice

2 tablespoons butter or butter substitute

Roll out dough to fit a 9-inch pie pan. Trim even with rim of pan.

Mix all ingredients except butter together and add to apples. Place in prepared pan, dot with butter. Roll top crust and place on top of apples. Trim with scissors so crust extends 1/2-inch beyond rim. Carefully lift top crust around edges and moisten bottom crust with water. Fold top crust over bottom crust and press together. Flute edges to create a rippled effect with your fingers or press all around with the tines of a fork.

Using scissors, cut slits or curved slits to resemble a tree branch with leaves in the top crust. Brush crust with milk and sprinkle generously with sugar. Do not put milk or sugar on the edges.

Bake on a cookie sheet in the lower third of a preheated 425-degree oven for 10 minutes. Lower temperature to 350 and continue baking for 30 minutes until crust is golden and filling is bubbly.

To save pie for future use, prepare but do not slit crust or brush with milk. Freeze unbaked.

To use, thaw for three to five hours on countertop or overnight in the refrigerator. Bake as directed. If pie is still frozen simply bake a little longer until bubbly.

To make many pies triple the Shaker pie crust recipe.

The following will make approximately 1 large, 4 medium and 1 small apple pie, along with enough dough for at least 2 pumpkin pies and some pie crust cookies.

7 20-ounce cans sliced apples, drained

4 cups sugar (or use 1/2 sugar and 1/2 Splenda sugar substitute)

3/4-cups dark brown sugar, packed

1-1/2 teaspoons salt

1 cup flour

1 tablespoon cinnamon

1/2-teaspoon nutmeg

Juice of 1-1/2 lemons

2 tablespoons butter or butter substitute for each pie

Follow above instructions. Do not mix ingredients with apples until crusts are prepared - the sugars and salt will produce too much liquid.

PECAN PIE

High fat, high cholesterol, this must be a "special occasion" dessert.

3 large eggs

1 cup light corn syrup

1 cup sugar

2 tablespoons melted butter or **Smart Balance** butter substitute

2-1/2 teaspoons vanilla

Dash of salt

1 cup pecan halves or pieces (pieces make it easier to cut the pie)

1 unbaked deep dish 9-inch pie shell (homemade or frozen)

Using a whisk, beat eggs slightly. Add next five ingredients, then nuts. Pour into pie shell.

Bake on a cookie sheet in a 400-degree oven 15 minutes. Lower temperature to 350, continue baking 30 to 35 minutes. Filling should be slightly less set in center than around edges.

Cool, chill and serve with whipped cream, topping or vanilla ice cream.

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Ingredients:

1 head cauliflower, cut down into 1 inch pieces
1 large sweet potato, cut into 1 inch pieces
1/2 cup low sodium chicken broth
2 TBSP heart healthy vegetable oil spread (such as **Smart Balance**, Take Control or Benecol)
1 tsp garlic powder
1 tsp black pepper
1 tsp oregano
dash salt

Directions:

1. Bring large pot of water to boil. Once water is rapidly boiling, add potatoes and cook until fork tender (approximately 10 minutes).

2. While water and potatoes are boiling, steam chopped cauliflower in steamer basket or microwave safe bowl until fork tender (approximately 8-12 minutes, depending on size of cauliflower)
3. Once potatoes are tender, drain water and return cooked potatoes to pot. Add in steamed cauliflower and chicken broth.
4. With potato masher or hand mixer, mash potato and cauliflower together until well combined, then mix in vegetable oil spread.
5. Season to taste. Recommended seasoning blend: garlic powder, black pepper, oregano and dash salt.
6. If using dry herbs (such as oregano) let sit for 3-5 minutes before serving to allow oregano to release its flavors.

Makes six 1-cup servings.

Nutritional Information:

Serving Size: 1 cup

Calories: 155

Fat: 3.3 grams

Saturated Fat: 1 gram

Protein: 2.5 grams

Carbohydrate: 29 grams

Dietary Fiber: 1.5 grams

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DATE: 11-05-2009

Kiss of Death Cookies

South Florida Sun-Sentinel

Andrew Innerarity, Sun Sentinel

(October 29, 2009)

The whole-wheat flour, oats and applesauce make these cookies full of fiber and low in fat, but the Hershey's Kiss seals the deal in making them delicious.

1/2 cup **Smart Balance**
2 cups whole-wheat flour
1 cup old-fashioned oats
1/4 cup wheat germ
1/2 teaspoon baking soda
1 egg
1/3 cup white sugar
1/3 cup brown sugar
1/3 cup unsweetened applesauce
1 teaspoon vanilla extract
1 egg white
36 Hershey's Kisses, wrappers removed

Spray baking sheets with no-stick cooking spray; set aside.

Preheat oven to 375 degrees. Place **Smart Balance** in a microwave-safe bowl and microwave on high 30 to 45 seconds to melt; set aside.

Mix flour, oats, wheat germ and baking soda in a large bowl.

In a separate bowl, beat whole egg with an electric mixer on medium until fluffy. Add melted **Smart Balance**, sugars, applesauce, vanilla and egg white.

Slowly incorporate egg mixture into flour mixture and mix thoroughly with an electric mixer on medium speed.

Scoop out tablespoons of batter onto prepared baking sheets, spacing them 1-inch apart. Ask kids to place one unwrapped Kiss in the center of each. Bake 7 to 9 minutes, until golden brown. Allow to cool 10 minutes and serve warm. Makes 36 cookies.

Per cookie: 88 calories, 32 percent calories from fat, 3 grams total fat, 1 gram saturated fat, 6 milligrams cholesterol, 13 grams carbohydrates, 2 grams total fiber, 6 grams total sugars, 12 grams net carbs, 2 grams protein, 41 milligrams sodium. Copyright (c) 2009,

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Flavor Cubes Roasted Pepper and Basil Tossler

3 tablespoons very finely chopped roasted peppers

1 tablespoon **Smart Balance** oil

2 teaspoons dried basil leaves

1 medium garlic clove, minced

2 teaspoons cider vinegar

Combine all the ingredients and stir until well blended.

Toss with warm pasta, potatoes or veggies.

Save the remainder by spooning sauce into ice cube trays, cover and freeze up to a month.

Buttery Herb Blend

3 tablespoons **Smart Balance** buttery spread

2 medium garlic cloves, minced

1 tablespoon dried oregano leaves

2 teaspoons dried basil leaves

1 teaspoon dried thyme leaves

½ teaspoon dried rosemary

¼-½ teaspoon dried pepper flakes

Combine all the ingredients and stir until well blended.

Toss with warm pasta, potatoes or veggies.

Save the remainder by spooning sauce into ice cube trays, cover and freeze up to a month.

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Serves 6; 2-tablespoon servings

2 cups **Smart Balance** Sour Cream and Omega-3s & Vitamins D and E

4 tablespoons of any **Smart Balance** milk variety

1 cup very finely chopped white onion

1 teaspoon Worcestershire sauce

2 teaspoons onion powder

2 teaspoons salt

Combine all the ingredients in a small bowl and serve with fresh veggies.

Chef's Tip: Save time before a party--prepare up to 2 hours in advance and refrigerate.

Per serving: 51 calories, 1 gram protein, 2 grams carbohydrate, 4 grams fat, 2.3 grams saturated fat, 0 grams monounsaturated fat, 0 grams polyunsaturated fat, 0 grams trans fat, 22 mg omega-3 fatty acids, 2 mg omega-6 fatty acids, 13 mg cholesterol, 215 mg sodium, 0 grams fiber

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The Best Flax Cookies Ever From Sondra Laurent-Michel, MS, RD, of Longmont, Colorado 1/2 C heart-healthy margarine spread (eg, **Smart Balance** or Brummel and Brown)

1/2 C brown sugar
1/3 C sugar or Splenda
2 egg whites
1 tsp vanilla
1/2 C all-purpose flour
1 C oat bran
3/4 C oats
2/3 C flax meal
1 tsp baking soda
1 tsp each cinnamon and nutmeg (optional)
1/4 C natural (no sugar added) applesauce

Directions Preheat oven to 350 deg F. In a large bowl, combine the flour, oat bran, oats, flax meal, baking soda, cinnamon, and nutmeg. In a separate bowl (or standing mixer), blend together the margarine, brown sugar, and sugar (or Splenda) until fluffy. Add the egg and vanilla and continue mixing until well blended, and then add applesauce. Combine the dry ingredients to the sugar mixture slowly. Continue mixing until thoroughly combined; mixture will be thick.

Spoon 1 T-size cookies onto pan. Bake 8 to 10 minutes on middle rack. Do not overbake.

Makes 48 servings
Calories: 61
Protein: 1 g
Carbs: 8 g
Total Fat: 3 g
Sodium: 21 mg
Fiber: 1 g

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White Onion Dip

Serves 6; 2-tablespoon servings

2 cups **Smart Balance** Sour Cream and Omega-3s & Vitamins D and E

4 tablespoons of any **Smart Balance** milk variety

1 cup very finely chopped white onion

1 teaspoon Worcestershire sauce

2 teaspoons onion powder

2 teaspoons salt

Combine all the ingredients in a small bowl and serve with fresh veggies.

Chef's Tip: Save time before a party-prepare up to 2 hours in advance and refrigerate.

Per serving: 51 calories, 1 gram protein, 2 grams carbohydrate, 4 grams fat, 2.3 grams saturated fat, 0 grams monounsaturated fat, 0 grams polyunsaturated fat, 0 grams trans fat, 22 mg omega-3 fatty acids, 2 mg omega-6 fatty acids, 13 mg cholesterol, 215 mg sodium, 0 grams fiber.

This great-tasting version of a favorite dip can help make your holiday snacking lighter.

REDACTED

Kiss of Death Cookies

Andrew Innerarity, Sun Sentinel
(October 29, 2009)

The whole-wheat flour, oats and applesauce make these cookies full of fiber and low in fat, but the Hershey's Kiss seals the deal in making them delicious.

1/2 cup **Smart Balance**
2 cups whole-wheat flour
1 cup old-fashioned oats
1/4 cup wheat germ
1/2 teaspoon baking soda
1 egg
1/3 cup white sugar
1/3 cup brown sugar
1/3 cup unsweetened applesauce
1 teaspoon vanilla extract
1 egg white
36 Hershey's Kisses, wrappers removed

Spray baking sheets with no-stick cooking spray; set aside.

Preheat oven to 375 degrees. Place **Smart Balance** in a microwave-safe bowl and microwave on high 30 to 45 seconds to melt; set aside.

Mix flour, oats, wheat germ and baking soda in a large bowl.

In a separate bowl, beat whole egg with an electric mixer on medium until fluffy. Add melted **Smart Balance**, sugars, applesauce, vanilla and egg white.

Slowly incorporate egg mixture into flour mixture and mix thoroughly with an electric mixer on medium speed.

Scoop out tablespoons of batter onto prepared baking sheets, spacing them 1-inch apart. Ask kids to place one unwrapped Kiss in the center of each. Bake 7 to 9 minutes, until golden brown. Allow to cool 10 minutes and serve warm. Makes 36 cookies.

Per cookie: 88 calories, 32 percent calories from fat, 3 grams total fat, 1 gram saturated fat, 6 milligrams cholesterol, 13 grams carbohydrates, 2 grams total fiber, 6 grams total sugars, 12 grams net carbs, 2 grams protein, 41 milligrams sodium.

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I made these cookies for Oatmeal Chocolate Chip Raisin Cookie S'mores . You can use all raisins or all chips. SERVES 24, 4 dozen.

Ingredients

1/2 lb **Smart Balance** butter spread, for baking
1 cup
Brown sugar 1/2 cup
Splendid Sugar Blend for Baking (replaces 1 cup sugar if you want)
2 eggs
1 teaspoon vanilla

1 1/2 cups flour baking soda cinnamon
1/2 teaspoon salt
3 cups quick oatmeal (or old fashioned) raisins
3 ounces chocolate chips Directions

- 1 Preheat oven to 350.
- 2 Cream sugars and **Smart Balance** together till creamy.
- 3 Add eggs and vanilla beat in well.
- 4 Combine flour, baking soda, cinnamon, salt and mix well into the cream mixture.
- 5 Stir in oats, chips and raisins.
- 6 Place by rounded tablespoonfuls on to an ungreased cookie sheet pans.
- 7 Bake 9-12 minutes
- 8 Cool on cookie sheet for a minute then remove and place on wire rack and cool.

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APPLE /CRANBERRY CRISP

3 cups unpeeled apples, chopped

2 cups cranberries

1 cup Splenda for baking

1/2 cup **Smart Balance** margarine

1 1/2 cup oatmeal (I used old fashioned)

1/2 cup Splenda brown sugar

1/3 cup flour

1/3 cup chopped pecans

Combine apples, cranberries and sugar in 8-inch baking dish; mix thoroughly. Set aside. Combine remaining ingredients until crumbly; spread evening over fruit layer. Bake at 350 degrees for one hour or until fruit is fork-tender. Serve warm with ice cream or whipped cream. I used fat-free whipped topping.

The cranberries are extremely healthy, apples are great, the sugar was replaced with Splenda, butter with Smart Balance. The oats are also a healthy addition to this tasty dessert. The change from whipping cream to whipped topping also reduces fat, carbs and cholesterol.

For a tasty, quick snack, open a tube of crescent rolls, separate dough into triangles, put 1/4 cup of cranberry sauce on

each triangle and fold dough over the sauce. Bake at 375 for 15 minutes. Sprinkle with powdered sugar. Serve warm.

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White Onion Dip

Serves 6; 2-tablespoon servings

2 cups **Smart Balance Sour Cream and Omega-3s & Vitamins D and E**

4 tablespoons of any **Smart Balance** milk variety

1 cup very finely chopped white onion

1 teaspoon Worcestershire sauce

2 teaspoons onion powder

2 teaspoons salt

Combine all the ingredients in a small bowl and serve with fresh veggies.

Chef's Tip: Save time before a party-prepare up to 2 hours in advance and refrigerate.

Per serving: 51 calories, 1 gram protein, 2 grams carbohydrate, 4 grams fat, 2.3 grams saturated fat, 0 grams monounsaturated fat, 0 grams polyunsaturated fat, 0 grams trans fat, 22 mg omega-3 fatty acids, 2 mg omega-6 fatty acids, 13 mg cholesterol, 215 mg sodium, 0 grams fiber.

This great-tasting version of a favorite dip can help make your holiday snacking lighter.

REDACTED

Oct 19, 2009

This recipe came out of many different attempts to make a healthier coffee cake. Enjoy!

SERVES 6, 6 pieces

(change servings and units)

Ingredients

1 1/4 cups

whole wheat pastry flour (sifted) 1/2 cup

brown sugar 2 teaspoons

baking powder 1 teaspoon

baking soda 1/4 teaspoon

salt 4 egg whites

1 cup

fat free sour cream vanilla blueberries lemon zest Topping

2 tablespoons

1 tablespoon

low-fat margarine (**Smart Balance** spread) flour Directions

1 Preheat oven to 350 degrees. Lightly coat 9"x9" pan with **Smart Balance** spread.

2 Mix dry ingredients separately.

3 Mix together eggs, sour cream, vanilla and lemon zest.

4 Mix wet and dry ingredients together.

5 Spread mixture into pan and top with blueberries.

- 6 Sprinkle topping mixture on top of blueberries.
- 7 Bake for 28-30 minutes. Yum!

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Mississippi Apple Jelly

3 pounds Granny Smith apples

2 pounds Gala apples

4-5 cups of water

3 cups sugar

Juice of one lemon

Rinse apples and remove stems. Quarter each apple, leaving peel and seeds intact. Place apples in heavy stock pan and add water. Simmer 30-45 minutes, until apples soften. Remove from heat, and drain apple mixture in a sieve or cheesecloth to separate liquid from apples, allowing 1-2 hours to drain completely. Refrigerate the liquid overnight.

Measure 4 cups of juice into heavy stock pan and bring to a simmer. Add 3 cups of sugar and lemon juice and return to simmer until temperature reaches 220 deg.

Pour mixture into sterilized glass jars, leaving 1-inch space at the top. Process in a water bath to seal, about 10 minutes. Jelly will set as it cools.

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The Best Broccoli Cheddar Soup With Chicken

Recipe #395217

4 1/4 hours

15 min prep

By: Chef #1113957

Oct 19, 2009

This is delicious and lower-fat than most creamy soups as it has no cream in it. I have adapted it from a number of broccoli soups and added chicken (use pre cooked to save time) to make it a more complete meal. Perfect winter comfort food!

SERVES 8 , 8 serving

(change servings and units)

Ingredients

4 (8 ounce) cans

low sodium chicken broth 1 (8 ounce) package

reduced-fat cream cheese , softened 1/2 cup

flour 8 tablespoons

butter or , alternative (I like **smart balance**) 1 cup diced

red onion 2 cups minced

fresh broccoli 3 medium

russet potatoes , peeled and cubed 2 cups shredded

chicken 12 ounces

cheddar cheese 2 teaspoons

fresh garlic cloves 1 teaspoon

crushed red pepper flakes (or to taste) black pepper Directions

1 Sauté onion and garlic with 2 tbsp butter until onion is becoming translucent.

2 In another pan melt remaining butter and slowly add flour to create a roue.

3 Combine all ingredients in crock pot and simmer on high for 4 hours or until potatoes are tender.

4 You may need to stir often during first hour to ensure all ingredients are combined.

5 Top with additional cheddar cheese and green onions if you like!

REDACTED

Sugar Free Pumpkin Bars With Cream Cheese Frosting

Recipe #395548

1 hour

30 min prep

By: Bizy_Mum

Oct 19, 2009

Completely sugar free dessert! I've been experimenting with a sweetener called "Xylitol" that I buy online and will gradually post recipes with my successful results. I promise never to post a recipe that hasn't passed the "Kid Test". I have four kids who are very, very finicky eaters. My kids CAN tell that these aren't made from real sugar - mostly because I don't have real sugar in my house anymore. But they still love these. I have also served these to friends without anyone knowing they weren't "normal" pumpkin bars. I started looking for a sugar substitute when a dear friend had surgery and became completely intolerant to any processed sugar. Splenda doesn't agree with me and I always prefer 'natural' options when possible. Xylitol IS more expensive than sugar, so experimentation is frustrating sometimes. I hope you will enjoy my successes without having to endure the waste I've had. It has 40% less calories than sugar, 75% less carbs, and has a glycemic index of 7 (compared to sugar at 68 and corn syrup at 100) and my friend can enjoy sweets once again! The key to using this in place of sugar is to MELT the xylitol before adding it to the recipes. I just melt mine in my pyrex measuring bowl in the microwave. I have found it's very important to MELT the Xylitol but not BOIL or otherwise over-heat it, because it does alter it's consistency like sugar. If you heat it too long, when it cools, it becomes rock hard. (I'm still figuring out how to use this to my advantage in fudge and caramels - I'll post when I get a successful outcome.) This pumpkin bar recipe is an adaptation of one I have in an old Better Homes and Gardens cookbook. I also use only whole-wheat flour and try to skim some of the fat (though not all, in order to keep a nice degree of moistness). I buy my Xylitol

online. Some bigger cities might have natural/health food stores that sell it in the store, but nothing near me. I pay about \$25 per 5 pound bag, so shop around. For me and my family, the switch is worth it.

SERVES 18 , 18 2 inch squares

(change servings and units)

Ingredients

Bars

1 1/2 cups

whole wheat flour 1/2 cup

wheat gluten (keeps the whole wheat texture 'lighter') 2 cups Xylitol Sweetener

2 teaspoons

baking powder 1 teaspoon

baking soda 1/2 teaspoon

salt cinnamon 1/4 teaspoon

clove , ground nutmeg 15 ounces

canned pumpkin 1/3 cup cooking oil (I use **Smart Balance** oil)

1/2 cup sugar-free applesauce

4

eggs (I use 4 egg whites and 2 whole eggs) Cream Cheese Frosting

8 ounces

cream cheese butter , softened (I use **Smart Balance** spread) vanilla 2 cups Xylitol Sweetener

Directions

1 Bar directions:

2 All Xylitol measurements refer to the measurement of the dry powder, not the melted liquid.

3 Melt the xylitol. It takes about 10 minutes for my microwave to melt the xylitol, but microwave times vary. It will be as clear as water when melted - don't let it boil! It's okay to stir it occasionally while melting it. Your wooden spoon will get a crusty layer that washes off easily. Xylitol isn't sticky even when hardened and clean up is a breeze! The xylitol when melted is very, very hot. Be careful and use something that can withstand the temperature - I've used ordinary glass mixing bowls and pyrex measuring bowls without problems. Plastic would probably melt. 2 cups of crystal Xylitol will be less than 2 cups of melted Xylitol - that's okay. It's sweeter than sugar!

4 USE OVEN MITTS WHEN HANDLING YOUR BOWL OF MELTED XYLITOL. It's that hot.

5 In a mixer, blend all ingredients together except the xylitol, flour, gluten and eggs.

6 Slowly pour the melted xylitol 'syrup' into the mixing bowl and mix.

7 Add flour and gluten.

8 Pour mixture into a 10x15x2 cake pan - spray first with cooking spray.

9 Bake at 350 degrees for about 25 to 30 minutes or until toothpick inserted in the center comes out clean. Allow to cool.

10 Frosting Directions:

11 I've had the hardest time adapting frosting to the Xylitol. I kept trying to use the same volume of Xylitol crystals as sugar. By the time the melted mixture returned to room temperature, the darn stuff would be rock hard and inedible.

However, if you don't melt the Xylitol and try to use the crystals creamed with your butter/margarine, it stays too crystallized and gives the frosting an unpleasantly crunchy texture.

12 I've finally come upon the perfect balance. It's still very sweet but stays creamy when spread and it's so much better for you!

13 So, melt your Xylitol as before. I use my small mixing bowl for this. I have to use oven mitts to move the mixing bowl from the microwave to my mixer stand.

14 Carefully add your butter or margarine. If you 'plop' it in, hot Xylitol splatters could burn you!

15 Add Vanilla.

16 Add the cream cheese in small dollops.

17 Start the mixer at low speed. Mix until no visible 'lumps' of cream cheese are seen. Blend at low speed for 3-5 minutes.

18 Allow frosting to cool on mixer stand. Periodically (every 5-10 minutes or so) turn the mixer on for short 3-5 minute bursts on slow speed. This seems to keep the cooling frosting creamy and prevent hard 'chunks' from forming.

19 When cooled to room temperature, spread on your cooled pan of pumpkin bars. For me, if I start the frosting as soon as the bars start cooking, they're usually cooled and ready at the same time.

20 Enjoy!

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South Florida Sun-Sentinel

The whole-wheat flour, oats and applesauce make these cookies full of fiber and low in fat, but the Hershey's Kiss seals the deal in making them delicious.

1/2 cup **Smart Balance**

2 cups whole-wheat flour

1 cup old-fashioned oats

1/4 cup wheat germ

1/2 teaspoon baking soda

1 egg

1/3 cup white sugar

1/3 cup brown sugar

1/3 cup unsweetened applesauce

1 teaspoon vanilla extract

1 egg white

36 Hershey's Kisses, wrappers removed

Spray baking sheets with no-stick cooking spray; set aside.

Preheat oven to 375 degrees. Place **Smart Balance** in a microwave-safe bowl and microwave on high 30 to 45 seconds to melt; set aside.

Mix flour, oats, wheat germ and baking soda in a large bowl.

In a separate bowl, beat whole egg with an electric mixer on medium until fluffy. Add melted **Smart Balance**, sugars, applesauce, vanilla and egg white. Slowly incorporate egg mixture into flour mixture and mix thoroughly with an electric mixer on medium speed.

Scoop out tablespoons of batter onto prepared baking sheets, spacing them 1-inch apart. Ask kids to place one unwrapped Kiss in the center of each. Bake 7 to 9 minutes, until golden brown. Allow to cool 10 minutes and serve warm.

Makes 36 cookies.

Per cookie: 88 calories, 32 percent calories from fat, 3 grams total fat, 1 gram saturated fat, 6 milligrams cholesterol, 13 grams carbohydrates, 2 grams total fiber, 6 grams total sugars, 12 grams net carbs, 2 grams protein, 41 milligrams sodium.

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Whoopie pies were a favorite treat at picnics and cookouts when I was growing up. But they're made with margarine and shortening, so they're laden with trans fat. Can you fix the recipe?

--Alison Clish, Uxbridge, MA Work time: 30 minutes / Total time: 45 minutes / Servings: 16

Recipe By Carl Raymond

An easy switch from margarine to a trans-free spread made these cookies healthier, while staying true to the original taste and texture. Using

marshmallow cream instead of a cooked filling containing shortening allowed us to eliminate fat and slash calories . 3/4 c granulated sugar

1/2 c 50/50

butter blend spread (we used **Smart Balance**) 1 egg white

2 tsp vanilla extract, divided

2 c all-purpose flour

1/2 c cocoa

powder 1 1/2 tsp baking soda

1/2 tsp baking

1/2 tsp salt

1 c fat-free milk

1 jar (7.5 oz)

cream (we used Marshmallow Fluff) 1 c confectioners' sugar

Heat oven to 350 degF. Grease 2 large baking sheets (or use parchment).

Cream granulated sugar and spread with electric mixer in large bowl. Beat in egg white and 1 teaspoon of the vanilla extract.

Mix flour, cocoa, baking soda, baking

, and salt in bowl. Beat dry ingredients gradually into wet ingredients, alternating with milk. Drop by rounded tablespoonfuls onto pans to make 32 cookies. Press each cookie with a spoon dipped in water to flatten slightly. 4. Bake until cookie springs back when touched lightly, 10 to 12 minutes. Cool completely.

Beat marshmallow cream with electric mixer, gradually adding confectioners' sugar. Add remaining 1 teaspoon vanilla extract and beat well until smooth, about 3 minutes. Drop about 1 tablespoon of filling onto a cookie and top with another cookie, pressing so filling spreads.

Nutritional Info Per Serving 231 cal, 3 g pro, 42 g carb, 1 g fiber, 6 g fat, 3 g sat fat, 8 mg chol, 220 mg sodium Our solution has: 34% fewer 33% less sat fat 100% less trans fat (0 g)

than the original recipe

Get a dessert makeover ! Craving a change? E-mail your favorite recipe to cook@prevention.com

Last Update: 06/20/2009

Issue Date: August 2009 Copyright 2009, Prevention

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DATE: 10-15-2009

October 15, 2009 by
Danielle

This weather, for lack of a more elegant word, blows. This is the perfect day to call in sick and go to Tabard for some hot cocktails. Bring a book, even. Jesus I wish I could do that.

Hot Buttered Toddy 1 1/2 oz rye or Bourbon whiskey

1/2 oz orange juice

1/4 tsp sugar

In a rocks glass, add ingredients. Fill with hot water. Float 1/4 pat of butter (roughly 3/4 oz) on top. Yes it (TM)s a lot of butter but it works. I like to put a dash of cinnamon and substitute the white sugar for brown which yes, is essentially turning this drink into cobbler topping. So what. A word to the wise " don (TM)t use margarine, I Can (TM)t Believe It (TM)s Not Butter, Country Crock, or really any of the fake butter stuff. Even **Smart Balance**, though I practically worship that stuff. It doesn't (TM)t melt the way true butter does and doesn't (TM)t taste right when melted. **Smart Balance** tastes the closest to real butter but it leaves a weird film.

With that in mind, and because I (TM)m sure you 'd rather not buy a stick of butter for only 1/4 of a pat, I recommend you do what I do: swipe extra butter packets at brunch!

REDACTED

Steve's Chocolate Protein Shake

Recipe #394398

5 min

5 min prep

By: smajc

Oct 13, 2009

I came up with this recipe to improve the taste and the consistency of the whey protein that I use. I use Optimum Nutrition Double Chocolate 100% Whey. Brand is important. Taste and cost vary greatly between brands! I setup a dozen or so small plastic containers that contain the dry ingredients ahead of time so I don't have to measure out the individual ingredients every day.

SERVES 1 , 1 drink

(change servings and units)

Ingredients

1/2 cup

water 1 scoop whey protein, Optimum Nutrition Double Chocolate

5 ice cubes

1/2

banana , smashed and frozen 1/8 teaspoon

xanthan gum 2 (1 g) packets

Splenda sugar substitute 2 teaspoons cocoa, 100% cocoa for baking

1 tablespoon smooth peanut butter, **Smart Balance**, Earth Balance, other

Directions

1 Add water to blender. I use a Magic Bullet so that I can use the mixing container as the glass I drink it from.

- 2 Add ice cubes second so that they will soften while you add the other ingredients.
- 3 Add 1/2 banana. I freeze 1/2 bananas that are smashed up in individual ziplock bags. Freezing them really thickens the shake over room temp bananas. Freezing is also a good way to save bananas that are getting too ripe.
- 4 Add protein powder. I use one scoop using the scoop that comes with the whey.
- 5 Add xanthan gum which thickens the shake.
- 6 Add Splenda and cocoa to taste.
- 7 Add peanut butter to taste.
- 8 Blend until smooth.

REDACTED

REDACTED

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Opposition Nos. 91196954 and 91197748
BALANCE BAR COMPANY v. GFA BRANDS, INC.
Offered by Applicant GFA Brands, Inc.

From: Bill Hooper <bhooper@smartbalance.com>
Sent: Friday, May 30, 2008 1:02 PM
To: 'Greg Venner'; 'Duane Primozich'
Cc: 'Tom Hollerbach'; 'Jen Beck'; 'Allan Charles'
Subject: FW: SB Named Best Popcorn in Men's Health
Attachments: Men's Health June 2008.pdf

This is pretty strong. How do we leverage it?

From: Jenna Scanlon [mailto:JScanlon@tbc.us]
Sent: Friday, May 30, 2008 11:50 AM
To: Jenna Scanlon; agever@smartbalance.com; ajacobus@smartbalance.com; rgluck@smartbalance.com; dmccarty@smartbalance.com; gvenner@smartbalance.com; jmintz@smartbalance.com; nmatar@smartbalance.com; pdray@smartbalance.com; shughes@smartbalance.com; tschulke@smartbalance.com; bhooper@smartbalance.com
Cc: Brent Burkhardt; Linda Percefull; Mark Walsh
Subject: SB Named Best Popcorn in Men's Health

Hello All:

Attached is a PDF of Men's Health "125 Best Foods For Men" which appears in the June issue. Smart Balance Light Butter Popcorn is featured as the "Best Popcorn" in the Best of the Beverage and Snack Aisle category (see #52 on page 4). The magazine compared nutritionals of competing brands within each category, giving bonus points to products with more protein and fiber and less added sugar and sodium, and also took calories into consideration. They then taste-tested the top products within each category to choose the winner.

Please let us know if you would like hard copies.

Thanks and best regards,

Jenna

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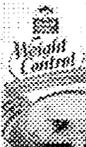


Best of the Breakfast and Bakery Aisles

1. BEST OATMEAL
Post Shredded Wheat
 One ingredient: whole wheat. No salt. No preservatives. No artificial sweeteners.



2. BEST INSTANT OATMEAL
Quaker Weight Control Banana Bread Oatmeal
 Simple to make -- 60 seconds or less. No preservatives. No artificial sweeteners. No added sugar.



3. BEST HOT CEREAL
Arrowhead Mills Steel Cut Oats
 It takes longer to cook than instant, but the extra processing of the oats results in more fiber.



4. BEST BREAKFAST BAR
South Beach Living High Protein Peanut Butter Cereal Bar
 A quick fix when you're short on time.



5. BEST SYRUP
Smucker's Sugar Free
 We prefer the simple syrup of course (just don't use too much), but this sugar-free syrup tastes like the real thing.



6. BEST LOAF BREAD
Arnold Natural 100% Whole Wheat
 Remember: Always choose 100 percent whole grain products.



7. BEST BUN
Arnold Select Wheat Sandwich Rolls
 Another bun you start with a better bun.



8. BEST BAGEL
Thomas' Hearty Grains Whole Wheat Bagel
 Packed with more fiber than most traditional bagels.



Men's Health

Eat Like a Man!

THE 125 BEST FOODS FOR MEN

SAVE BIG ON TIME AND CALORIES WITH OUR TOP PICKS FROM EVERY AISLE IN THE SUPERMARKET!

SHOP FOR MORE FOODS AT MENSHEALTH.COM!

Best of the Dairy Case

22. BEST MILK
Organic Valley Reduced Fat
 Great for any time you want a shot of muscle-building protein.



23. BEST CHOCOLATE MILK
Organic Valley Reduced Fat
 Best right after a intense workout, when the extra sugar will replenish your depleted fuel stores.



24. BEST SHAKING CHEESE
Laughing Cow Mini Babybel Original
 Individually packaged and just away from the cheese department.



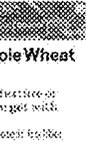
25. BEST SHREDDED CHEESE
Kraft 2% Mozzarella
 Top it with 80%, then add one cheese-flake at 400°F for 15 to 20 minutes.



5. BEST ENGLISH MUFFIN
Thomas' Oatmeal & Honey English Muffins
 Surprising tip: Spreading this muffin with a pat of butter -- instead of jelly -- will lower its glycemic index.



14. BEST PASTA
Ronzoni Healthy Harvest Whole Wheat Blend Spaghetti
 This has none of the gritty texture or unappealing flavor that you get with 100% whole-wheat pasta.



10. BEST TORTILLA
MexAmerica 100% Whole Wheat
 Top with refined beans and shredded cheese. Bake at 400°F until crisp.



16. BEST QUICK-COOKING RICE
Uncle Ben's Fast & Natural Whole Grain Instant Brown Rice
 100 percent whole-grain rice -- and that's all.



11. BEST PITA
Thomas' Sahara Pita Pockets, 100% Whole Wheat
 To cook, crisp, coat with olive oil and bake at 450°F until crisp.



13. BEST FLOUR
King Arthur 100% Whole Wheat
 If you choose whole wheat bread, select one the same brand of flour!



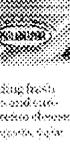
21. BEST DELI SWISS CHEESE
Sargento Deli Style Aged Swiss
 This tasty, little-flavored cheese makes any sandwich taste better.



22. BEST COTTAGE CHEESE
Friendship
 Packed with protein, with half the carbs of other brands. Perfect as a post-bed snack.



23. BEST CREAM CHEESE
Kraft Philadelphia Light
 Make flavored spreads by adding fresh herbs, or crisp chicken and shredded tomatoes to softened cream cheese.



12. BEST PIZZA CRUST
Boboli 100% Whole Wheat
 They're #1, #2, #3, and #4 in taste. Bake at 450°F for 12 to 15 minutes. Then drizzle with olive oil and top with herbs.



18. BEST GRAIN
Arrowhead Mills Organic Quinoa
 For more than 10 tasty quinoa recipes, go to MensHealth.com/recipes.



24. BEST ALL-PURPOSE CHEESE
Cypress Grove Chevre
 Crumble on hot pasta tossed with pesto, or try it as a snack with a ripe pear.



90. BEST PREPARED SNACKABLE
Wholly Biscuits
 Many granola-like options exist, but these 4 cereals are made with whole grains and are low in sugar and fat. For \$2.99 (10 ounces), 10 grams fat, 10 grams fiber.



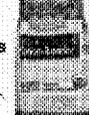
100. BEST VINAIGRETTES
Annie's Naturals Shitake & Sesame Vinaigrette
 Great overroasted greens. Also has a need for adding this ingredient to your diet. For \$2.99 (10 ounces), 10 grams fat.



109. BEST SPICE MIX
Nando's Chickenland Medium Peri-Peri Grind
 A well-balanced blend of African chili peppers, sea salt, lemon, and garlic. Use on chicken breast before grilling. For \$2.99 (10 ounces).



102. BEST CENTERS
Arrowhead Mills Organic Green Lentils
 A great addition to soups and salads. For \$2.99 (10 ounces), 10 grams fat.



92. BEST ALL-PURPOSE CONDIMENT
Flora Pasta Genovese
 Great on pasta, but you can also spread it on a cooked turkey sandwich or add a teaspoon to vinaigrette dressing. For \$2.99 (10 ounces), 10 grams fat.



101. BEST MARINADE
Soy Vay Vay Teriyaki
 Works wonders on anything roasted for the grill: chicken, salmon, even vegetable skewers. Just give your food a 15-minute soak first. For \$2.99 (10 ounces), 10 grams fat.



110. BEST COOKING SPRAY
100% Natural Pam Olive Oil
 Slings up your cooking volume with a better flavor than regular Pam. For \$2.99 (10 ounces), 10 grams fat.



108. BEST CHARGED TOMATOES
Flora Foods San Marzano
 Make an authentic Neapolitan pizza sauce by crushing the tomatoes by hand and adding a pinch of salt and a splash of olive oil. For \$2.99 (10 ounces), 10 grams fat.



93. BEST PEANUT BUTTER
Crazy Richard's 100% Natural Chunky
 Mix it up with reduced ginger, the juice of lime, a dash of brown sugar, and 1/2 tsp of 100% pure apple cider vinegar. For \$2.99 (10 ounces), 10 grams fat.



103. BEST LAUNDER ENHANCER
Roland Chipotle Peppers
 Barbecue sauce is sweeter. Mix equal parts powdered chipotle. Upon reheat, add a dash of honey. For \$2.99 (10 ounces), 10 grams fat.



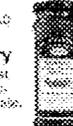
111. BEST SOY SAUCE
Kikkoman Less Sodium
 Forty percent less sodium than the regular, and we promise you won't even notice it. For \$2.99 (10 ounces), 10 grams fat.



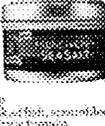
105. BEST READY-TO-EAT TUNA
Starkist Flavor Fresh Pouch Chunk Light in Water
 A more natural product. For \$2.99 (10 ounces), 10 grams fat.



94. BEST JELLY/FRUIT SPREAD
St. Dalfour 100% All Natural Strawberry
 No added sugar, and the first ingredient is actually strawberries—no other additives. For \$2.99 (10 ounces), 10 grams fat.



104. BEST FRESHING SALT
McCormick French Grey Sea
 This coarse, flaked salt adds a crunch to any dish, from roasted eggs to a simple vegetable medley. For \$2.99 (10 ounces), 10 grams fat.



112. BEST CHOCOLATE SAUCE
Nestlé Nesquik Chocolate Syrup
 When you need variety... For \$2.99 (10 ounces), 10 grams fat.



120. BEST READY-TO-EAT TUNA... PERIOD
Ortiz Bonito del Norte in Olive Oil
 Skip the mayo with this pricey, high-quality Spanish import. Instead, toss in chopped olive, capers, parsley, and lemon. For \$2.99 (10 ounces), 10 grams fat.



95. BEST SALAD TOPPING
Melissa's Fire Roasted Sweet Red Bell Peppers
 To the most versatile vegetable on the market—a red bell pepper—add a little fire for salads, sandwiches, pizza, and more. For \$2.99 (10 ounces), 10 grams fat.



106. BEST COOKING SALT
Diamond Crystal Kosher Salt
 Trade in your shaker of iodized salt for this kosher brand. The larger crystals give you more control over your seasoning. For \$2.99 (10 ounces), 10 grams fat.



Best of the Packaged Food Aisles



101. BEST READY-TO-EAT SALMON
Bumble Bee Premium Wild Pink Salmon
 An alternative to tuna. For \$2.99 (10 ounces), 10 grams fat.



86. BEST SANDWICH SPREAD
Flora Italian Foods Artichoke Pesto
 Try this bright, garlicky spread as a substitute for grilled chicken and melted mozzarella. For \$2.99 (10 ounces), 10 grams fat.



105. BEST EVERYDAY COOKING OIL
Colavita Extra Virgin
 Full flavor and a reasonable price tag make this a great staple in your pantry. For \$2.99 (10 ounces), 10 grams fat.



113. BEST SOUP
Lucini Rustic Italian Minestrone
 A classic, hearty and nutritious as homemade version of minestrone. For \$2.99 (10 ounces), 10 grams fat.



102. BEST VINEGAR
Monari Paderzoni Balsamic of Modena
 Remember this rustic 2-part wine oil. It's a great vinegar. For \$2.99 (10 ounces), 10 grams fat.



87. BEST VEGETABLE DIP
Bufiles Gourmet Mild Black Bean Dip
 Take this up a notch by adding a handful of pepper jack cheese and some warming hot sauce. For \$2.99 (10 ounces), 10 grams fat.



106. BEST HIGH-END OLIVE OIL
Olio Santo Extra Virgin
 Save this slightly pricier, full-flavored oil for making vinaigrettes or finishing dishes like freshly grilled turbot. For \$2.99 (10 ounces), 10 grams fat.



114. BEST CHILI
Bush's Homestyle Original with Beans
 Consider this for a 2-ounce tosh on a busy weekday. For \$2.99 (10 ounces), 10 grams fat.



121. BEST JARRED VEGETABLE
Cento Marinated Artichoke Hearts
 These hearts make a nice addition to just about any salad, pasta, pizza, or sandwich. For \$2.99 (10 ounces), 10 grams fat.



88. BEST CHILI
Athanos Spicy Three Pepper
 This southwestern medley is a great side dish or vegetable dip and sandwich spread. For \$2.99 (10 ounces), 10 grams fat.



107. BEST COOKING SAUCE
Swanson Certified Organic Free Range Chicken Broth
 No need to fret about a little extra sodium. For \$2.99 (10 ounces), 10 grams fat.



115. BEST CANNED BEANS
Goya Black Beans
 These beans will be a top pick for you. For \$2.99 (10 ounces), 10 grams fat.



124. BEST PICKLE
Claussen Kosher Dill Halves
 When you crave something crunchy and salty. For \$2.99 (10 ounces), 10 grams fat.



89. BEST CREAMY SAUCE
Draw's All Natural Smoked Tomato
 For the perfect cream-based sauce, use this smoked tomato. For \$2.99 (10 ounces), 10 grams fat.



108. BEST SEASONING
McCormick Smoked Paprika
 No need to fret about a little extra sodium. For \$2.99 (10 ounces), 10 grams fat.



116. BEST REFINED BEANS
Taco Bell
 Most canned refried beans are dry and pasty, but these beans are our favorite. For \$2.99 (10 ounces), 10 grams fat.



122. BEST SANDWICH TOPPING
Flora Giardiniera
 This spicy Italian medley of vegetables makes a great sandwich topper. For \$2.99 (10 ounces), 10 grams fat.



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Men's Health

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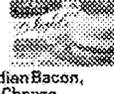
56. BEST CHOCOLATE BAR
Chocolove Strong Dark Chocolate 70% Cocoa
 Almost dark chocolate bars start off with the chocolate nibs. These ones are made with the finest cacao nibs, organic sugar, and organic vanilla. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



57. BEST TURKEY ENTRÉE
Marie Callender's Honey Roasted Turkey
 It's phenomenally high in healthy omega-3 fatty acids. Per 100g: 110 calories, 15 grams of protein, 15 grams of fat.



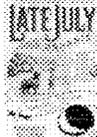
75. BEST FROZEN BREAKFAST SANDWICH
Jimmy Dean D-lights Canadian Bacon, Egg White and Cheese
 A solid source of protein. Per 100g: 290 calories, 15 grams of protein, 15 grams of fat.



Best of the Condiment Aisle



58. BEST COOKIE
Late July Organic Vanilla Bean Tea with Green Tea
 Like an Oreo—only 41 calories! Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



62. BEST FROZEN PASTA
Bertolli Roasted Chicken and Linguine
 This pasta isn't just packed with protein. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



76. BEST ICE CREAM
Breyer's All Natural Mint Chocolate Chip
 Packs fewer calories per serving than other leading brands but still tastes delicious. Per 100g: 150 calories, 17 grams of protein, 15 grams of fat.



59. BEST KETCHUP
Heinz Organic
 For a spicy-sweet sandwich and burger spread, mix equal parts ketchup, mayonnaise, and cheddar cheese. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



60. BEST DRIED FRUIT
Welch's Berry Medley
 Almost perfect for you, but every handful is loaded with vitamins C and other antioxidants. Just start eating the whole bag. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



64. BEST MICROWAVE PIZZA
South Beach Diet Pepperoni Pizza
 The easy winner in its category. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



77. BEST FROZEN TREAT
Eby's/Dreyer's Slow Churned Vanilla with Crunch Ber
 When you want to indulge, this bar provides protein instead. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



61. BEST MUSTARD
Grey Poupon Country Dijon
 Adds more ratio of spice to mustard spread up than any other. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



65. BEST FRUIT MIX
Planters Trail Mix Berry, Nut, and Chocolate
 A smart substitute for a candy bar. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



69. BEST FROZEN SHACK
Lean Pockets Mexican Style Three Cheese & Chicken Quesadilla
 A fast snack that's made on-site. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



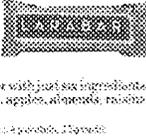
Best of the Meat Cooler



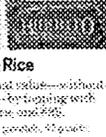
63. BEST MAYONNAISE
Spectrum Naturals Canola
 Because it's made with soybean oil instead of vegetable oil, it has fewer trans fats. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



62. BEST ENERGY BAR
Lärabar Apple Pie
 Fantastic flavor with just six ingredients: dates, walnuts, apples, almonds, raisins, and cinnamon. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



70. BEST FROZEN BURRITO
Amy's Cheddar Cheese, Beans & Rice
 Improves its nutritional value—without cutting quality—by topping each fresh tortilla, lettuce, and cheese. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



78. BEST PACKAGED COLD CUTS
Hormel Natural Choice Priced Daily Meats
 Great-tasting protein, ready anytime. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



66. BEST BBQ SAUCE
Dinosaur Bar-B-Que Slathering Sauce
 Wait until the last 10 minutes of grilling to pour your food with sauce—otherwise the sugar in the sauce will burn. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



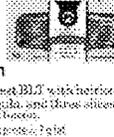
68. BEST PROTEIN POWDER
Nitrovan Vanilla Whey-Casein Blend
 Tastes better than any powder we've tried. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



71. BEST PIZZA
Palermo's Primo Thin Ultra-Thin Crust Pizza Special Edition Pepperoni
 For better than daughter's pizza. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



79. BEST BACON
Niman Ranch Applewood-Smoked Bacon
 Built the world's best BLT with heirloom tomatoes, arugula, and three slices of this tasty, smoked bacon. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



67. BEST STEAK SAUCE
Peter Luger Steak House Old Fashioned Sauce
 We still haven't found a steak sauce that compares with the famed Brooklyn condiment. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



Best of the Freezer Aisle



72. BEST FROZEN VEGETABLE
Birds Eye Garden Peas
 Quickest way to get healthy dinner: Briefly simmer the peas with two cups of broth and half a cup of onion. Done in a heartbeat. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



80. BEST FRESH SALISADÉ
AllFresco Roasted Garlic Chicken Sausage
 Cooked and made with natural ingredients. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



69. BEST PASTA SAUCE
Muir Glen Organic Garlic Roasted Garlic
 Has very little added sugar, unlike many other pasta sauces, which may dump in half a cup per jar. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



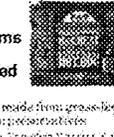
64. BEST BEEF ENTRÉE
Stouffer's Lean Cuisine Steak Tips Portobello
 Makes great sauce. But for dinner, you'll need more than one to fill you up. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



73. BEST FROZEN FRUIT
Dole Wildly Nutritious Mixed Berries
 Contains a cup of berries with a splash of juice. Serve the warm berry sauce over vanilla ice cream. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



81. BEST HOT DOG
Applegate Farms The Great Organic Uncured Hot Dog
 These winners are made from grass-fed beef and turkey. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



69. BEST SALSA
Draw's All Natural
 Cheeky for you, still the most flavorful condiment on the market. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



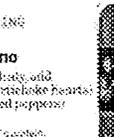
82. BEST CHICKEN ENTRÉE
Marie Callender's Grilled Chicken Breast
 Statistically, this is what to look for in a frozen dinner. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



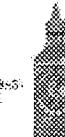
74. BEST WAFER
Van's All-Natural Belgian 7-Grain
 We found this in the health food store. And while we wouldn't have it as a treat, it's a superior treat—and high fiber content—makes it worthy of our list. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



83. BEST PIZZA TOPPING
Columbus Salame Toscano
 For a fun twist, try it with sliced mushrooms, artichoke hearts, and roasted red peppers. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



80. BEST HOT SAUCE
Tuang Ot Sriracha
 Add a splash of this to your Asian chili sauce to a building pot of any noodle dish for a spicy sandwich spread. Per 100g: 100 calories, 15 grams of protein, 12 grams of fat.



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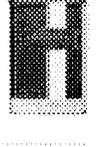
25. BEST SECRET TOPPING
Vermont Butter and Cheese Co. Creams Fraiches
 Do this addition alone allow to easily create no-guilt, heart-healthy appetizers, dips, dressings, and more.
 Per ounce: 100 calories, 12g fat



30. BEST SPORTS DRINK
Accelerata
 Unlike many other sports drinks, it doesn't just provide water, but also helps with muscle recovery and electrolyte balance.
 Per ounce: 100 calories, 12g fat



42. BEST HOT CHOCOLATE
Bellagio Sipping Chocolate
 Made with 100 percent cocoa powder, each bite is rich with cocoa and packed with fiber.
 Per ounce: 100 calories, 12g fat



50. BEST TORTILLA CRISP
Garden of Eatin' Black Bean
 These tortilla crisps are made with fiber, so they're packed with fiber.
 Per ounce: 100 calories, 12g fat



26. BEST FLAX PRODUCT
Fage Total
 Mix this healthy yogurt with our best article of 2007 and a handful of chopped shallots for a great and simple grilled fish or chicken.
 Per ounce: 100 calories, 12g fat



34. BEST ORANGE JUICE
Tropicana Grab-n-Go with Calcium and Vitamin D
 This small container keeps the juice fresh and makes it easy to drink on the go.
 Per ounce: 100 calories, 12g fat



43. BEST BEER
Guinness Draught
 There may be better-tasting beers out there, but no one else has fewer calories than this Irish stout.
 Per ounce: 100 calories, 12g fat



38. BEST CRACKER
Triscuit Original
 One of our personal picks.
 Per ounce: 100 calories, 12g fat



27. BEST FLAVORED YOGURT
Fage with Honey
 The honey adds an empty-calorie sweetener, it provides a boost by being so powerful and delicious.
 Per ounce: 100 calories, 12g fat



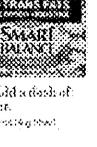
35. BEST FRUIT JUICE
R.W. Knudsen Family Just Blueberry
 Tastes like medicine. Just 2 ounces a day will give you antioxidant boost without the sugar overload.
 Per ounce: 100 calories, 12g fat



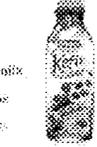
44. BEST LIGHT BEER
Amstel Light
 Smooth, but doesn't taste watery like most light beers.
 Per ounce: 100 calories, 12g fat



32. BEST BUTTER
Smart Balance Light Butter
 Free of trans fats but still with plenty of healthy flavor. Add a dash of it to make it even better.
 Per ounce: 100 calories, 12g fat



28. BEST ENERGY
Lifeway Lowfat Blueberry
 Think of this fermented milk product as liquid sugar.
 Per ounce: 100 calories, 12g fat



32. BEST VEGETABLE JUICE
Low Sodium VB
 Great for drinking, great for cooking, and good to some for your heart.
 Per ounce: 100 calories, 12g fat



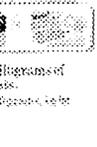
45. BEST RED WINE UNDER \$20
Tenuta di Arceno Primo-Voce 2004, Italy
 If you know a little about wine, you'll love this wine. It's a blend of Cabernet Sauvignon and Merlot, with a hint of Syrah.
 Per ounce: 100 calories, 12g fat



36. BEST BEEF JERKY
Bridgford
 Better, snicker, and not added sugar.
 Per ounce: 100 calories, 12g fat



29. BEST EGGS
Eggland's Best
 Each egg contains 170 milligrams of heart-healthy omega-3 fats.
 Per egg: 100 calories, 12g fat



37. BEST TEA BLEND
Honest Tea Green Dragon
 We found this to have the highest antioxidant content of any commercial green tea we tested.
 Per ounce: 100 calories, 12g fat



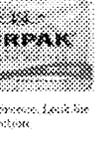
46. BEST WHITE WINE UNDER \$20
Montes Limited Edition Sauvignon Blanc 2007, Chile
 Zesty lime and pink grapefruit notes lend the quality that goes perfectly with summer foods.
 Per ounce: 100 calories, 12g fat



34. BEST MIXED NUTS
Planters NUT-rition Heart Healthy Mix
 Loaded with good fats.
 Per ounce: 100 calories, 12g fat



30. BEST BUTTER
Lurpak
 This Danish butter is more expensive than most, but it's the difference that makes it so special.
 Per ounce: 100 calories, 12g fat



38. BEST TEA BLEND
Stash Premium Green Tea
 A USDA Analytical found that Stash products had higher levels of antioxidants than several other popular brands.
 Per ounce: 100 calories, 12g fat



47. BEST BLENDED WINE
Symington's Quinta do Vesuvio Vintage Port 2001, Portugal
 Great for special occasions. Taste it with some cheese.
 Per ounce: 100 calories, 12g fat



35. BEST ALL-PURPOSE
Blue Diamond Smokehouse
 Good on anything.
 Per ounce: 100 calories, 12g fat



31. BEST SPORTS DRINK
Breakatone All Natural
 Go for the better tasting, all-natural drink. It has a low-sugar formula that's low-fat and low-calorie.
 Per ounce: 100 calories, 12g fat



39. BEST FLAVORED HERBAL TEA
Stash Premium Peppermint
 A refreshing yet soothing brew.
 Per ounce: 100 calories, 12g fat



48. BEST PRETZEL
Rold Gold Honey Wheat Braided Twists
 A soft touch of sweetness.
 Per ounce: 100 calories, 12g fat



36. BEST FLAVORED NUTS
Emerald Cocoa Roast Almonds Dark Chocolate
 Rich, bitter, and sweet.
 Per ounce: 100 calories, 12g fat

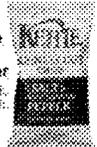


Best of the Beverage and Snack Aisle

49. BEST COFFEE
Illy Espresso Coffee (Medium Grind)
 As deep and rich as the best coffee gets. Plus, the grounds are great to use with chili powder and almond powder, and make the best coffee.
 Per ounce: 100 calories, 12g fat



48. BEST POTATO CRISP
Kettle Brand Krinkle Cut Chips, Salt & Fresh Ground Pepper
 The perfect balance of salt, spice, and big crunch.
 Per ounce: 100 calories, 12g fat



37. BEST NUT CRACKERS
Hapi Hot Wasabi Peas
 Has an addictive kick.
 Per ounce: 100 calories, 12g fat



HOW WE CHOSE THE WINNERS We ranked this year's diet by first comparing the nutrition labels of competing brands in each of our 125 categories. We gave bonus points to those products with more protein and fiber and less added sugar and sodium. We also took calories into consideration but didn't penalize for fat, because fat adds flavor, helps keep hunger at bay, and is part of a healthy diet if it doesn't lead to excessive calorie intake. Once we pared our choices down, we matched them in a head-to-head taste-test to determine the victor. As for scores, the number next to the product with the lowest ingredients.

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The Spread You Love Is **NOW NON-GMO**

What you put in your food matters. So does what you leave out.

Smart Balance is proud to be the only leading spread* with 100% non-GMO sourced ingredients.

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Available at select retailers beginning in March and nationwide by summer 2014.

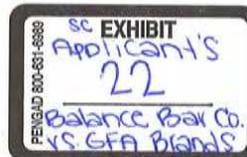
*Leading spreads analysis based on marketplace survey (Feb. 2014) of top 5 buttery spreads products (Nielsen Scan, Jan. 2014)



Try Out Other Delicious Non-GMO Spreads
Non-GMO ingredients are coming soon to every
Smart Balance® Buttery Spread.

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<http://www.smartbalance.com/>



7/3/2014

GFASB025945



THE SMART BALANCE FOOD PLAN™

[GET STARTED →](#)



Our Non-GMO Journey

As we work to make more of our products without GMOs, we want to keep you informed.

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[Chicken Breast](#)

[Strawberry and
Banana Skewers with
Chocolate Peanut
Butter Dip](#)



Did You Know?

Our peanut butter spreads are already Non-GMO and available on a shelf near you.

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AT THE HEART OF EVERY GREAT MEAL

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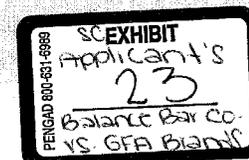
Smart Balance Tracking Research

Wave 12 Tracking Study Report Summary May, 2013

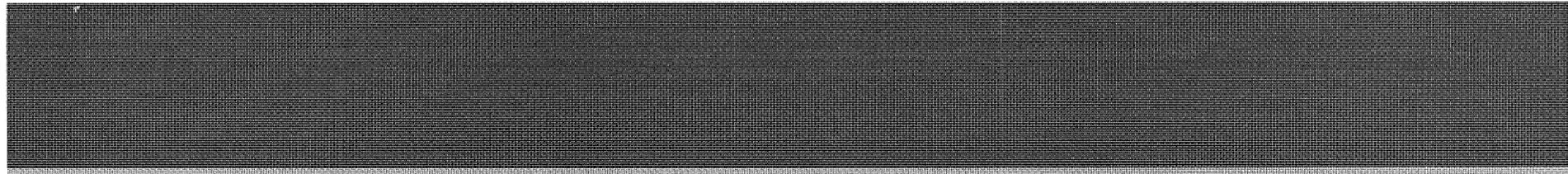
SMART ♥ BALANCE INC.



HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY



GFASB025185



REDACTED

SMART ♥ BALANCE INC.



Smart Balance Awareness Wave Comparison

(Butter/Margarine/Blends base at % US Households)

REDACTED

Year to Year Awareness Trends (Feb Waves) (Butter/Margarine/Blends at % US Households)

REDACTED

Year to Year **TOTAL** Awareness Trends (Feb Waves) (Butter/Margarine/Blends at % US Households)

REDACTED

Wave 12 Competitive Past 12 Mo. Purchasing (Butter/Margarine/Blends at % US Households)

REDACTED

Year to Year Past 12 Mo Reported Purchasing Trends (Feb Waves) (Butter/Margarine/Blends at % US Households)

REDACTED

Promoters Measure*

(Measure taken among each Brands' Awares)

REDACTED

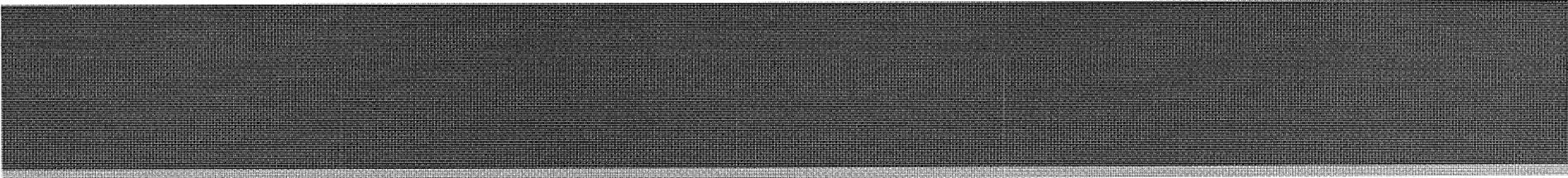
Year to Year Promoter Measure Trends (Feb Waves) (Measure among each Brands' Awares)

REDACTED

Promoter Measure*

(Measure among each Brands' Awares and Aware Brand Loyals)

REDACTED



REDACTED

SMART ♥ BALANCE INC.



Smart Balance Franchise Buyer: New/Refined Definition

REDACTED

SMART ♥ BALANCE INC.

Report: 04/2013

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GFASB025196



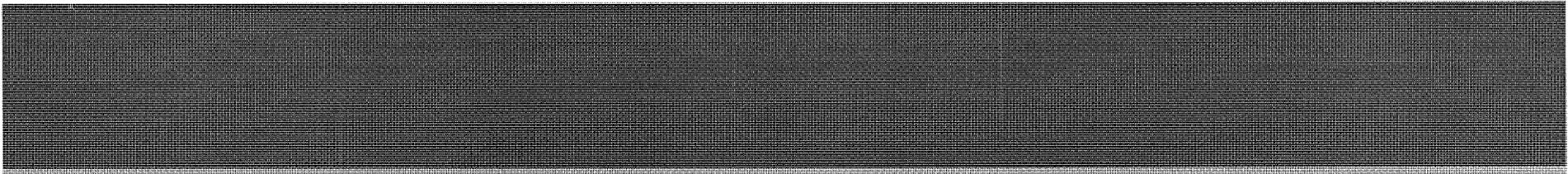
W12 Smart Balance Franchise Penetration

REDACTED



Wave 12 Smart Balance Franchise Buyers Multi-Product Usage

REDACTED



REDACTED



SB Brand Attributes Wave 12 (Among all Brand Awares)

REDACTED

Wave 12 - Brand Attributes: Health & Emotional/Brand (Among Respective Brand Awares)

Smart [REDACTED] Health [REDACTED]
[REDACTED]

Wave 12 - Brand Attributes: Taste & Gluten Free (Among Respective Brand Awares)

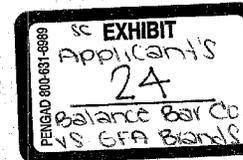
REDACTED

Smart Balance Heart Health Omnibus Research

Final Report Summary

10/09/12

SMART ♥ BALANCE INC.



FORERUNNER

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GFASB025180

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GFASB025181

REDACTED

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

GFASB025182

REDACTED

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

GFASB025183

FORERUNNER



Heart Health Omnibus Results Comparison

REDACTED

SMART ♥ BALANCE INC.

HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

GFASB025184

EXHIBIT H-2

TIMOTHY KRAFT

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

In the Matter of Application Serial Nos. 77/864206
and 77/864258: SMART BALANCE Published in the
Official Gazette on April 20, 2010, and August 10,
2010, respectively

DEPOSITION OF TIMOTHY KRAFT

July 23, 2014

BALANCE BAR COMPANY,

Opposer,

v.

Opposition No. 91196954

Opposition No. 91197748

GFA BRANDS, INC.,

Applicant.

APPEARANCES:

SCHROEDER LAW, PC

By R. Glenn Schroeder, Esq.

110 Cooper Street, Suite 605

Babylon, New York 11702

Appearing on behalf of Opposer.

QUARLES & BRADY, LLP

By Johanna M. Wilbert, Esq.

411 East Wisconsin Avenue, Suite 2350

Milwaukee, Wisconsin 53202-4497

Appearing on behalf of Applicant.

TIMOTHY KRAFT

1 Pursuant to Notice and the Trademark Rules
2 of Practice and the Federal Rules of Civil Procedure,
3 the deposition of TIMOTHY KRAFT, called by Applicant,
4 was taken on Wednesday, July 23, 2014, commencing at
5 12:03 p.m., at 2660 Canyon Boulevard, Boulder,
6 Colorado, before Janet Lee Priestley, Registered
7 Professional Reporter and Notary Public within and
8 for the State of Colorado

9
10 I N D E X

11
12 DEPOSITION OF TIMOTHY KRAFT

13
14 Direct Examination by Ms. Wilbert 4
15 Cross-Examination by Mr. Schroeder 23

16
17 EXHIBITS INITIAL REFERENCE
18 Exhibit 41 Photograph of Simply Balanced 10
19 granola bar
20 Exhibit 42 May 2013 tracking study relating 13
21 to the Smart Balance brand
22 Exhibit 43 8-25-00 letter to Lucy B. Arant 20
from John L. Ambrogi
23 Exhibit 44 7-12-06 letter to Bob Harris from 23
Brendan J. O'Rourke
24
25

TIMOTHY KRAFT

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I N D E X (Continued)

| EXHIBITS PREVIOUSLY MARKED | PAGE |
|---|------|
| Exhibit 39 Earth Balance baseline tracking summary from December 2012 (HIGHLY CONFIDENTIAL) | 17 |
| Exhibit 40 Packaging images of Earth Balance natural fruit bars | 21 |

TIMOTHY KRAFT

1 PROCEEDINGS

2 TIMOTHY KRAFT,

3 being first duly sworn in the above cause, was

4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. WILBERT:

7 Q Today I'd like to talk to you about GFA'S
8 enforcement strategy related to the Smart Balance and
9 Earth Balance trademarks. But before we do that, I'd
10 like to go through a little bit of background.

11 What's your name?

12 A Timothy Richard Kraft.

13 Q Are you employed?

14 A I am.

15 Q Where are you employed?

16 A Boulder Brands, Inc.

17 Q Is Boulder Brands, Inc. related to the
18 applicant in this opposition, GFA Brands?

19 A Yes.

20 Q What is that relationship?

21 A GFA Brands, Inc. is a wholly owned
22 subsidiary and the primary operating affiliate of
23 Boulder Brands, Inc.

24 Q What is your job title?

25 A Senior vice president, associate general

TIMOTHY KRAFT

1 counsel.

2 Q Does that mean you're an attorney?

3 A Yes.

4 Q Where are you licensed to practice?

5 A I'm licensed in the state of Wisconsin,
6 and I have a single client license in the state of
7 Colorado.

8 Q Could you please describe your general job
9 responsibilities.

10 A Yes. I'm generally in charge of all the
11 day-to-day legal matters for the company so things
12 like contract negotiation, product label review,
13 management of the intellectual property portfolio.

14 Q You mentioned intellectual property
15 portfolio. Are you responsible for overseeing any of
16 GFA Brand's trademarks?

17 A I am.

18 Q What are some of the trademarks that are
19 owned by GFA Brands that you're responsible for
20 overseeing?

21 A Smart Balance, Earth Balance, Udi's,
22 Glutino, Evol, Glutin Free Pantry, Best Life.

23 Q I'd like to focus first on your
24 responsibilities related to the Smart Balance
25 trademark. Are you generally responsible -- or are

TIMOTHY KRAFT

1 you generally familiar with the history related to
2 the Smart Balance trademark?

3 A I am.

4 Q How did you become familiar with the
5 history of the Smart Balance trademark?

6 A I've spoken with our general counsel as
7 well as external counsel, and I've reviewed the file
8 for the Smart Balance mark.

9 Q When was the Smart Balance trademark first
10 introduced to the market?

11 A Around 1996.

12 Q And what was the first product sold in
13 connection with the Smart Balance trademark?

14 A Smart Balance Buttery Spread.

15 Q Can you give me some examples of other
16 products that are sold today in connection with the
17 Smart Balance trademark?

18 A Smart Balance peanut butter, enhanced
19 milk, mayo, cooking oil, snacks.

20 Q Now I'd like to talk about enforcement of
21 the Smart Balance mark. What is your responsibility
22 with respect to decisions that are made about
23 enforcing the Smart Balance trademark?

24 A Well, I'm essentially the final screen.
25 So we utilize external counsel to monitor marks in

TIMOTHY KRAFT

1 the marketplace. We also utilize our sales team to
2 survey the marketplace for marks that could
3 potentially be interesting to our legal team.

4 Q Is the Smart Balance trademark important
5 to GFA Brands?

6 A It is.

7 Q Why?

8 A It accounts for a good share of our
9 profits.

10 Q Now, I believe you just touched on this,
11 but specifically what does GFA Brands do to monitor
12 the market for potential infringement of the Smart
13 Balance trademark?

14 A So as I said, we utilize external counsel.
15 They've got a watch service. And also, our sales
16 team is active in the marketplace in examining new
17 marks from time to time.

18 Q Does GFA Brands have any guidelines for
19 assessing whether another trademark is likely to
20 cause confusion with the Smart Balance trademark?

21 A We do.

22 Q What are those guidelines generally?

23 A For the Smart Balance mark, generally
24 speaking, we are interested in S Balance marks and
25 Smart B marks. And for us, order matters. So if

TIMOTHY KRAFT

1 you're looking at a Balance S mark, that typically
2 would not be brought to my attention. So order is
3 important. And again, it's S Balance marks and Smart
4 B marks, generally speaking.

5 Q Could you think of an example where GFA
6 applied the guidelines you just described and
7 concluded that it needed to take action to enforce
8 its trademark rights with the Smart Balance
9 trademark?

10 A Yes. Not too long ago there was a mark
11 called Smart Blend. And given that that hit our
12 search criteria, being a Smart B mark, we examined it
13 more carefully. And when you look at the words
14 "blend" and "balance" in connection with edible oils,
15 balance of oils, balance of fat, blend of oils, blend
16 of fat, we found that to be problematic.

17 Q What action did GFA take?

18 A We sent a cease and desist letter.

19 Q What was the consequence of sending that
20 letter?

21 A They stopped using the mark.

22 Q Can you give me an example of a trademark
23 of the sort that GFA would consider but decide not to
24 take action on?

25 A Sure. Not too long ago someone brought to

TIMOTHY KRAFT

1 my attention the fact that the mark Smart Balance was
2 used in connection with financial services, so like a
3 checking account purpose. And given that that's a
4 financial services sector, outside of the food
5 sector, it was not a mark that we deemed to be
6 problematic.

7 Q Has Balance Bar analyzed any consumer
8 packaged goods and then decided not to take action?

9 A So you said "Balance Bar." Did you mean
10 Smart Balance?

11 Q Yeah, I'm so sorry. I have too many
12 "balance" words in my mind. Let me rephrase that.

13 Can you give us an example of when GFA
14 Brands has considered enforcing a Smart Balance
15 trademark with respect to consumer packaged goods but
16 decided not to take action?

17 A Yes. There is a mark called Simply
18 Balanced. And that is a mark I believe owned by
19 Target, and it's a mark we've been watching very
20 carefully. It hits our initial search criteria so
21 it's been brought to my attention, and we've watched
22 it over the years. Target has done a bit of work
23 with that mark. It's evolved. So initially it was
24 marked as a secondary mark under the Archer Farms
25 private label brand. So goods were marked Archer

TIMOTHY KRAFT

1 Farms, Simply Balanced. Over time Target has
2 eliminated or ceased using the Archer Farms in
3 certain categories of goods, where now you'll see
4 Simply Balanced as the primary mark.

5 But in our evaluation of that mark and the
6 use, we looked at a number of things. One, the fact
7 that it's a captive brand to Target. It is not a
8 national brand available at all retailers. It is
9 only sold at Target stores. And secondly, Target has
10 done a very nice job with their trade dress, their
11 packaging. So a Target shopper will go through the
12 food section of the store, and all of the Simply
13 Balanced private labeled goods are in very prominent
14 turquoise color packaging, and they utilize a
15 consistent circle in the center of the front panel,
16 which is somewhat reminiscent of the Target logo.
17 And it's very easy for their private label shoppers
18 to identify the Simply Balanced goods throughout the
19 store. So we continue to monitor Target's evolving
20 use of that mark.

21 (Exhibit 41 marked.)

22 Q (By Ms. Wilbert) The court reporter has
23 just handed you what's been marked as Applicant's
24 Exhibit 41. What is Applicant's Exhibit 41?

25 A This is a photograph of the Simply

TIMOTHY KRAFT

1 Balanced granola bar.

2 Q And does Exhibit 41 accurately reflect the
3 trade dress that you just were referring to?

4 A It does.

5 Q And what product is -- what products are
6 depicted in Exhibit 41?

7 A Cherry almond Greek yogurt granola bars as
8 well as nut and seed bars.

9 Q Are you aware of any instances of actual
10 confusion between any of Target's Simply Balanced
11 products and any of GFA's Smart Balance products?

12 A No.

13 Q Have the enforcement strategies and
14 guidelines that you described for us that GFA uses to
15 evaluate the likelihood of confusion with third-party
16 trademarks changed over time or stayed the same?

17 A Changed over time.

18 Q How have GFA's strategies regarding
19 enforcement changed over time with regard to the
20 Smart Balance trademark?

21 A When the Smart Balance trademark was
22 initially introduced, the company had a very
23 aggressive enforcement strategy. The company was
24 very active against Smart marks broadly as well as
25 Balance marks broadly. As the brand has grown and

TIMOTHY KRAFT

1 become more well known, our strategy has changed.
2 Further, the realities of the marketplace have
3 evolved, as well. You see a lot of Smart marks. You
4 see a lot of Balance marks in the food space;
5 Balanced Diet, Balanced Nutrition, Smart Water. I
6 mean, you can think of quite a few marks. So as our
7 brand has become more well known and established, our
8 trademark enforcement strategy has evolved, as well.
9 So in the early years we may have pursued any Smart
10 or any Balance mark. Now, as I described earlier, we
11 apply additional rigor to our analysis.

12 Q I believe when you were just speaking you
13 mentioned market realities. Does GFA do anything to
14 monitor how consumers are perceiving the Smart
15 Balance brand or the strength of the Smart Balance
16 trademark?

17 A We do.

18 Q What does GFA Brands do in connection with
19 the Smart Balance trademark?

20 A We commission tracking studies on an
21 annual basis, I would say.

22 Q Could you please look at what has been
23 previously been marked as Applicant's Exhibit 39.
24 I'm sorry. That's not what I want.

25 (Exhibit 42 marked.)

TIMOTHY KRAFT

1 Q (By Ms. Wilbert) Could you please look at
2 Exhibit No. 42, which the court reporter has just
3 handed you. Could you please confirm that this bears
4 the Production No. GFASB025185 through GFASB025202.

5 A Yes.

6 Q What is Exhibit 42?

7 A This is a tracking study relating to the
8 Smart Balance brand that was commissioned in May of
9 2013.

10 Q Who prepared this document?

11 A Forerunner Strategy.

12 Q Who is Forerunner Strategy?

13 A It's an independent third-party consultant
14 that we use from time to time.

15 Q Was Exhibit 42 prepared for this
16 litigation?

17 A No.

18 Q Could you please turn to Page 3 of
19 Applicant's Exhibit 42. Generally what does Page 3
20 show?

21 A This shows consumer awareness of the Smart
22 Balance brand.

23 Q Specifically, what are the -- what is it
24 showing about consumer awareness?

25 A This shows that of those surveyed,

TIMOTHY KRAFT

1 73 percent of responders were aware of the Smart
2 Balance brand, which in my opinion is a rather high
3 brand awareness.

4 Q Do statistics of brand awareness of the
5 Smart Balance trademark influence GFA's legal
6 strategy with respect to whether GFA believes a
7 third-party trademark is likely to cause confusion
8 with the Smart Balance trademark?

9 A It does.

10 Q How so?

11 A With a high brand awareness of above
12 70 percent, as shown here, it forms our trademark
13 enforcement strategy, in that it's evidence that our
14 consumers or consumers at large are aware of the
15 Smart Balance brand, that it's a strong brand, and
16 that the likelihood of confusion is minimal or I
17 would say not strong.

18 Q Could you please turn to Page 14 of
19 Applicant's Exhibit 42. What does the term "Smart
20 Balance franchise buyers" refer to in the context of
21 Page 14?

22 A A Smart Balance franchise buyer is a
23 consumer that regularly purchases Smart Balance
24 goods.

25 Q What do the statistics on Page 14 tell the

TIMOTHY KRAFT

1 company about Smart Balance franchise buyers?

2 A It states that the overwhelming majority,
3 84 percent, of Smart Balance franchise users report
4 purchasing the brand in multiple categories, two or
5 more. So basically if someone is a loyal Smart
6 Balance spread buyer, this would indicate that
7 84 percent of those buyers are also buying Smart
8 Balance milk or they're going to another area of the
9 store and maybe purchasing Smart Balance peanut
10 butter, Smart Balance popcorn, Smart Balance
11 mayonnaise. It shows that our consumer is able to
12 find our products throughout the store despite the
13 sea of brands and goods in the grocery store.

14 Q Do statistics about franchise buyers
15 impact GFA's legal strategy with respect to whether
16 GFA believes a third-party trademark is likely to
17 cause confusion with the Smart Balance trademark?

18 A Yes. It's real evidence that the mark is
19 very strong. So the stronger the mark, the less
20 likely it is that a consumer would be confused with
21 another Balance mark.

22 Q Is the legal department aware of any
23 instances of actual confusion between the Smart
24 Balance trademark and any other trademarks that use
25 the term "Balance"?

TIMOTHY KRAFT

1 A No.

2 Q I'd like to talk to you now for a few
3 minutes about some of the Balance Bar trademarks that
4 are at issue in this opposition. Balance Bar has a
5 number of different trademarks at issue including
6 Balance, Balance Gold, Balance Bar Gold, Balance Bar,
7 and Balance Bare. Going forward I'm going to refer
8 to this collection of marks as the Balance Bar marks.
9 Is that fair?

10 A Yes.

11 Q The Balance Bar marks all start with the
12 term "Balance." Does GFA Brands have any trademarks
13 that start with the term "Balance"?

14 A No.

15 Q Has GFA Brands ever used the term
16 "Balance" standing alone to signify the source of any
17 of its products?

18 A Not to my knowledge.

19 Q Thinking particularly about snack foods
20 such as popcorn that GFA has sold in connection with
21 the Smart Balance trademark, are you aware of any
22 instances of confusion between the snack products
23 offered under the Smart Balance trademark and any of
24 the products offered under any of the Balance Bar
25 trademarks?

TIMOTHY KRAFT

1 A No.

2 Q Thinking a little bit broader of all of
3 the products offered under the Smart Balance
4 trademark, since 1996 when the Smart Balance
5 trademark was first introduced to the market, are you
6 aware of any instances of confusion between products
7 offered by GFA under the Smart Balance trademark and
8 products offered under any of the Balance Bar marks?

9 A No.

10 Q Earlier in the deposition I believe you
11 mentioned that Earth Balance was one of the
12 trademarks for which you have responsibility; is that
13 correct?

14 A Correct.

15 Q What are your responsibilities in
16 connection with the Earth Balance trademark?

17 A So I'm in charge of its enforcement
18 strategy.

19 Q Could you please look at Exhibit 39, which
20 should be in front of you. What is Applicant's
21 Exhibit 39?

22 A This is another tracking summary, this
23 time for the Earth Balance brand, that is dated
24 January 3, 2013.

25 Q Who prepared this document?

TIMOTHY KRAFT

1 A Forerunner Strategy.

2 Q Was it prepared in connection with this
3 litigation?

4 A No.

5 Q Could you please turn to Page 7 of
6 Applicant's Exhibit 39. The last bullet point on
7 Page 7 states, "The brand is highly differentiated
8 from Smart Balance despite sharing the category base
9 of spreads." Does this data influence GFA's
10 enforcement analysis related to the Earth Balance or
11 the Smart Balance trademark?

12 A Yes.

13 Q How so?

14 A It demonstrates that consumers are not
15 overly concerned with the sharing of the Balance name
16 within the marks. Smart Balance and Earth Balance
17 appeal to a very -- well, scratch that. Smart
18 Balance and Earth Balance are highly differentiated,
19 according to the study, despite the fact they share
20 "Balance" in their name. That tells me that
21 "Balance" is not something that is of key importance
22 from a branding perspective. Therefore I would not,
23 in my policing activity, place too much weight on
24 "Balance" in isolation. Our enforcement strategy is
25 really keyed in on the use of "Balance" together with

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1 either "Smart" or "Earth."

2 Q Are the Earth Balance and Smart Balance
3 trademarks used on similar goods?

4 A Yes.

5 Q What are some examples of the goods that
6 are used on both trademarks?

7 A Buttery spreads, popcorn. I would even
8 argue milk and milk substitutes, mayonnaise.

9 Q Are you aware of any instances of
10 confusion between products sold in connection with
11 the Earth Balance trademark and products sold in
12 connection with the Smart Balance trademarks?

13 A No.

14 Q Do you believe that the use of "Balance"
15 in both the Smart Balance trademark and Earth Balance
16 trademark is likely to cause consumer confusion in
17 the future?

18 A No.

19 Q Why not?

20 A Based on my experience with these brands
21 and as demonstrated with this study, the brands are
22 highly differentiated despite sharing the term
23 "Balance" in both marks. We've got a pretty long
24 history of these products sitting in the same
25 categories, in the same store. Peanut butter was

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1 another one I forgot. You go into Wal-Mart, and
2 you'll see Smart Balance and Earth Balance sitting
3 next to each other on the shelf. And to my
4 knowledge, there's no confusion between the brands.
5 And as this report shows, consumers believe they're
6 highly differentiated.

7 (Exhibit 43 marked.)

8 Q (By Ms. Wilbert) The court reporter has
9 just handed you what's been marked as Applicant's
10 Exhibit 43. What is Applicant's Exhibit 43?

11 A This is a demand letter from the company's
12 legal counsel to Balance Bar.

13 Q What is the subject matter of the demand
14 letter?

15 A It has to do with Balance Bar's
16 application to register the mark "Balance" in certain
17 categories of goods.

18 Q What was the outcome of this August 25,
19 2000 letter?

20 A Both companies continued to use the term
21 "Balance" in their marks.

22 Q Based on the enforcement policies and
23 guidelines that GFA Brands used today, would GFA
24 decide to send this same letter?

25 A No.

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1 Q Why not?

2 A As I said, our enforcement strategy is
3 intended to reflect the realities of today's
4 marketplace. The term "Balance," as demonstrated
5 through these tracking studies, can be used
6 differently, and consumers are able to distinguish
7 various uses of the term "Balance." Therefore our
8 position is "Balance" in isolation is not a term that
9 can be owned in today's marketplace.

10 Q Has GFA ever offered bar products in
11 connection with the Earth Balance trademark?

12 A Yes.

13 MS. WILBERT: Can we go off the record for
14 a moment.

15 (Discussion off the record.)

16 Q (By Ms. Wilbert) Looking at what's
17 previously been marked Applicant's Exhibit 40, does
18 Applicant's Exhibit 40 reflect the Earth bars that
19 you were familiar with GFA previously offering?

20 A Yes; Earth Balance bars, yes.

21 Q Did GFA's legal counsel take any action in
22 connection with the company's decision to offer fruit
23 bars under the Earth Balance trademark?

24 A I believe we filed a trademark application
25 for the Earth Balance mark in that class of goods.

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1 Q When GFA sold fruit bars in connection
2 with the Earth Balance trademark, was there any
3 confusion with any of the Balance Bar marks?

4 A Not to my knowledge.

5 Q Does GFA sell fruit bars in connection
6 with the Earth Balance trademarks today?

7 A No.

8 Q Why not?

9 A When these bars were introduced, they were
10 launched into a test market. During a test market we
11 have certain benchmarks and criteria that we examine
12 to determine if the product will be successful. In
13 my understanding, in connection with the Earth
14 Balance bars that test market was not a success so we
15 decided to not roll out the bars nationally or in a
16 full market.

17 Q What happened to the Earth Balance
18 trademark application that you referenced?

19 A After the business team decided the launch
20 would not move forward, we abandoned the registration
21 application.

22 Q Are you aware of any recommendation made
23 by counsel for GFA to discontinue the fruit bar
24 products that were being offered under the Earth
25 Balance trademark?

TIMOTHY KRAFT

1 A No.

2 (Exhibit 44 marked.)

3 Q (By Ms. Wilbert) The court reporter has
4 just handed you what's been marked Applicant's
5 Exhibit 44. What is Exhibit 44?

6 A This is a demand letter from counsel for
7 Balance Bar to GFA concerning GFA's use of the Earth
8 Balance mark in the bar category.

9 Q Did Applicant's Exhibit 44 play any role
10 in GFA's decision to discontinue the bar product?

11 A Not to my knowledge.

12 MS. WILBERT: Thank you. I have no more
13 questions.

14 MR. SCHROEDER: Let's take a short break.

15 (Recess from 12:32 p.m. to 12:42 p.m.)

16 CROSS-EXAMINATION

17 BY MR. SCHROEDER:

18 Q Good afternoon, Mr. Kraft. I have a few
19 questions to ask you, and then we'll get you out of
20 here.

21 I don't know that Ms. Wilbert asked you
22 this question, but when did you start with the
23 company?

24 A July of 2009.

25 Q So when you testified regarding the usage

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1 of the marks since 1996, that's not based on any
2 firsthand knowledge, is it?

3 A It's based upon my review of the file.

4 Q Okay. Thank you. And likewise, when we
5 were discussing -- or you were discussing earlier the
6 fruit bar that was sold in 2005, that's not based on
7 any firsthand knowledge, is it?

8 A Correct. Again, it's based on my review
9 of the file and discussion with the business team.

10 Q Is there anyone still at the company who
11 was around in 2005?

12 A Yes.

13 Q And did you speak with that person?

14 A Yes.

15 Q Who would that be?

16 A Howard Seiferas.

17 Q Thank you.

18 When you testified earlier about what was
19 marked as Applicant's Exhibits 43 and 44, which are
20 letters dated respectively 2000 and 2006, do you have
21 any firsthand knowledge -- let me rephrase that.

22 To confirm, you weren't with the company
23 in either the year 2000 or 2006, correct?

24 A Correct.

25 Q So you don't have any firsthand knowledge

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1 of what actually took place in 2000 when Exhibit 43
2 was sent to -- sent on behalf of GFA, correct?

3 A Correct. Again, I've reviewed the file.

4 Q And likewise, with respect to Applicant's
5 Exhibit 44, you don't have any firsthand knowledge as
6 to what took place in 2006 when this letter was
7 received, correct?

8 A Correct.

9 Q Thank you.

10 You testified earlier regarding the Simply
11 Balanced mark owned by Target, correct?

12 A Correct.

13 Q And you indicated that the mark has
14 evolved and that GFA continues to monitor Target's
15 evolving use of its mark, correct?

16 A Correct.

17 Q And you also testified that GFA has not to
18 date taken any action with respect to the Simply
19 Balanced mark, correct?

20 A Correct.

21 Q Do you know whether Target ever filed a
22 trademark application which encompasses buttery
23 spreads?

24 A I don't believe they have.

25 Q Is that something you would object to?

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1 A Yes.

2 Q Would that have been part of your decision
3 whether to or not take action?

4 A It would have been one of many factors,
5 yes.

6 Q But as far as you know, you don't
7 recall -- to the best of your knowledge, you don't
8 recall whether they filed an application which
9 encompassed buttery spreads?

10 A I'd have to review the application.

11 Q Do you know if Target has ever filed an
12 application for the mark Simply Balanced which
13 encompasses nutrition bars?

14 A I'd have to review the application. I
15 know they're using the mark in connection with
16 nutrition bars.

17 Q Are they using the mark in connection with
18 buttery spreads?

19 A Not to my knowledge.

20 Q You also spoke about trade dress and how
21 that influenced your decision not to take action at
22 this point, correct?

23 A Correct.

24 Q And you pointed to the distinctive
25 packaging that Target uses on this particular brand,

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1 correct?

2 A Correct.

3 Q Does that have any bearing in a trademark
4 opposition proceeding, trade dress? Does trade dress
5 have any bearing in a trademark proceeding?

6 A It certainly has a bearing on whether or
7 not we initiate a proceeding.

8 Q So you are aware -- you indicated earlier
9 you're an attorney and that you have involvement with
10 the IP portfolio. Are you aware that a trademark --
11 let me rephrase that.

12 Are you aware that the trademark in
13 dispute here, Smart Balance, is simply a word mark?
14 Do you know what that means?

15 A Well, you said it is simply a word mark.
16 That's true. There is a word mark registration and
17 application.

18 Q Is the application in dispute a word mark?

19 A It is.

20 Q Is there any trademark associated with the
21 design features associated with the mark in dispute
22 today?

23 A No.

24 Q Thank you.

25 Let's take a look back at Applicant's

TIMOTHY KRAFT

1 Exhibit 42. You had referenced Page 3 in your
2 earlier testimony, and in particular you were looking
3 at the graph which indicated that 73 percent of
4 consumers were aware of the Smart Balance mark,
5 correct?

6 A Correct.

7 Q Do you know what types of consumers were
8 interviewed to reach that particular number?

9 A I'd have to review the study.

10 Q The top caption in parentheses indicates
11 "Butter/Margarine/Blends base at % US households."
12 Do you see that copy?

13 A Yes.

14 Q So would these consumers have been
15 consumers of butters, margarines, and blends?

16 A I believe so.

17 Q Would these consumers have included
18 prospective purchasers of nutrition bars?

19 A Potentially.

20 Q You testified earlier that the term
21 "Balance" is not something of key importance in a
22 branding strategy. That's maybe a paraphrasing of
23 what you said, but do you recall testifying regarding
24 the term "Balance"?

25 A I do.

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1 Q And is that a fair statement of what you
2 said earlier?

3 A No. I believe I testified that the term
4 "Balance" is part of the analysis, but I do not put
5 excessive weight on that word alone. I looked at the
6 two words in connection with our mark.

7 Q Okay. Do you believe that testimony today
8 is consistent with the position that GFA took in the
9 ongoing Heinz/GFA opposition proceeding?

10 A I believe that it is consistent. And
11 Heinz was concerned with the "Smart" mark, not
12 "Balance."

13 Q You believe it's consistent with the
14 statements that were made in the trial brief filed in
15 that proceeding?

16 A You'll have to be more specific. Is your
17 question regarding "Balance"?

18 Q Correct, regarding "Balance." Do you
19 recall GFA arguing in the Heinz/GFA proceeding
20 that -- and I'll quote: Furthermore, that the term
21 "Smart" is both laudatory and extensively used by
22 third parties means that the term is weak and must be
23 given less weight in the trademark analysis.

24 Now, do you think that particular argument
25 is consistent with what you're testifying to today

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1 regarding the term "Balance"?

2 A Absolutely. What you just recited was
3 specific to the term "Smart." My testimony and the
4 company's position is our uniqueness is the
5 combination of the term "Smart" together with
6 "Balance."

7 Q Is it your position today that the term
8 "Balance" doesn't have any more significance in this
9 mark than the term "Smart"?

10 A Again, my testimony is that I don't put
11 undue weight on either in isolation. I look at them
12 together.

13 MR. SCHROEDER: Let's take a one-minute
14 break, and I think I'm done.

15 MS. WILBERT: Sure.

16 (Recess from 12:52 p.m. to 12:54 p.m.)

17 Q (By Mr. Schroeder) I just have one final
18 question. You spoke earlier about a change in the
19 enforcement policy of GFA's use with respect to the
20 mark. When did that enforcement policy change, if
21 you know?

22 A It's changed. I think the term I used was
23 evolved, so a gradual change. But based on my
24 involvement starting in 2009, I have firsthand
25 knowledge that it's changed since the mid-1990s.

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1 Q And at least as early as 2009, it's
2 changed under your direction and control?

3 A Right. We apply additional rigor to our
4 analysis, given today's marketplace realities.

5 MR. SCHROEDER: No further questions from
6 me.

7 (The examination concluded at 12:55 p.m.,
8 July 23, 2014.)

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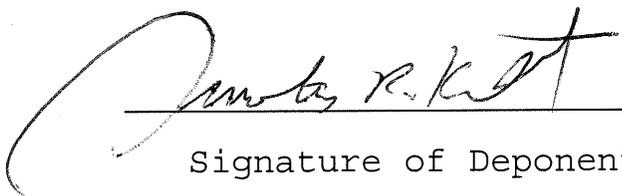
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9 (X) No Amendments

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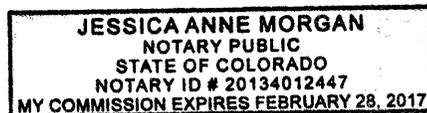
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9 I further certify that this deposition was
10 taken in shorthand by me at the time and place herein
11 set forth, that it was thereafter reduced to
12 typewritten form, and that the foregoing constitutes
13 a true and correct transcript.

14 I further certify that I am not related to,
15 employed by, nor of counsel for any of the parties or
16 attorneys herein, nor otherwise interested in the
17 result of the within action.

18 In witness whereof, I have affixed my
19 signature this 28th day of July, 2014.

20 My commission expires October 29, 2017.

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TIMOTHY KRAFT
July 23, 2014
Balance Bar vs. GFA
Opposition No. 91196954
Opposition No. 91197748

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The original deposition was filed with
Johanna M. Wilbert, Esq., on approximately the
28th day of July, 2014.

_____ Signature waived

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Thank you.

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Cc: All Counsel

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5 count

push to
open



Serving suggestion

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

Applicant

EXHIBIT

41

BB v BFA

AGREN BLANDO REPORTING

No. 91196954

GFA_EB001754

Nutrition Facts

Serving Size 1 bar (35g)
Servings Per Container 5
Amount Per Serving
Calories 150 Calories from Fat 40

% Daily Values*

| | |
|-------------------------------|------------|
| Total Fat 4.5g | 7% |
| Saturated Fat 2g | 10% |
| Trans Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 80mg | 3% |
| Total Carbohydrate 22g | 7% |
| Dietary Fiber 1g | 4% |
| Sugars 14g | |

Protein 5g

Vitamin A 0% • Vitamin C 2%
Calcium 8% • Iron 6%

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

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



Carton made from
minimum 35%
post-consumer
recycled paper

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Guest Services 1-800-316-8151
Keep packages for reference.



Great on the go

Simply Balanced Cherry Almond Greek Yogurt Granola Bar makes a tasty and convenient breakfast or a great anytime snack. Savor the blend of the creamy Greek yogurt coating, cherries and almonds in every delicious bite.

Simply Balanced, because...

- No High fructose corn syrup
- No partially hydrogenated oils
- No artificial flavors or colors

Our simple promise

The Simply Balanced guarantee means taking the guesswork out of eating well.



Simply
balanced.™

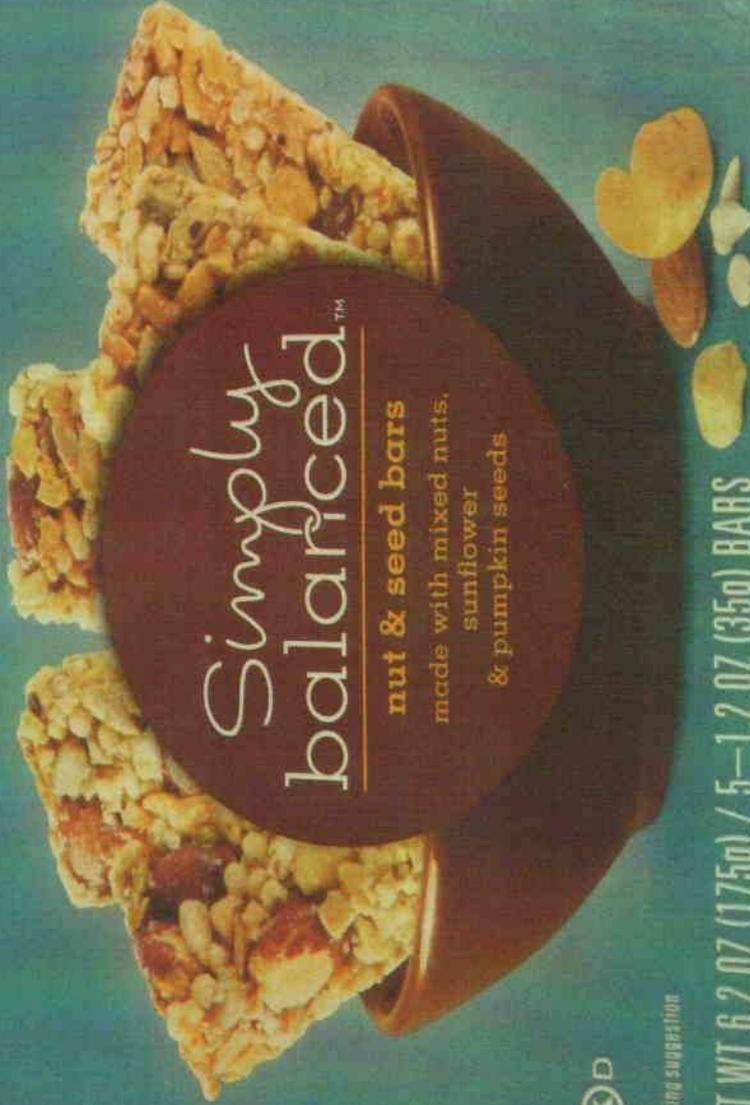
cherry almond
Greek yogurt
granola bar

©D

NET WT 1.2 OZ (35g)

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

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Nutrition Facts

Serving Size 1 Bar (35g)
Servings Per Container 5

| Amount Per Serving | |
|-------------------------------|--------------|
| Calories 180 | |
| Calories from Fat 110 | |
| % Daily Value* | |
| Total Fat 12g | 18% |
| Saturated Fat 2g | 10% |
| Trans Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 50mg | 2% |
| Total Carbohydrate 14g | 5% |
| Dietary Fiber 2g | 8% |
| Sugars 7g | |
| Protein 5g | |
| Vitamin A 0% | Vitamin C 0% |
| Calcium 2% | Iron 4% |

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

| | | |
|--------------------|-------------------|---------|
| Total Fat | Less than 65g | 85g |
| 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 |



Carton made from
minimum 35%
post-consumer
recycled paper

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Simply
balanced.

Great on the go

Simply Balanced Nut and Seed Bar is made with almonds, peanuts, cashews, sunflower seeds, hazelnuts, coconut, pumpkin seeds and soybeans. It makes a tasty and convenient breakfast or great anytime snack. Savor the blend of delicious nuts and seeds in every bite.

Simply Balanced. because...

- No High fructose corn syrup
- No partially hydrogenated oils
- No artificial flavors or colors

Our simple promise

The Simply Balanced guarantee means taking the guesswork out of eating well.

Smart Balance Tracking Research

Wave 12 Tracking Study Report

Summary

May, 2013

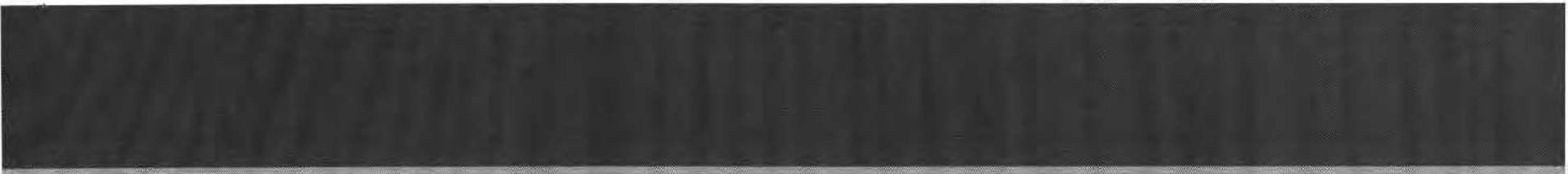
SMART ♥ BALANCE INC.



Applicant
EXHIBIT 42
BB v BFA
AGREN BLANDO REPORTING
No. 91196954

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GFASB025185



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SMART ♥ BALANCE INC.

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SMART ♥ BALANCE INC.

Report: 04/2013

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SMART ♥ BALANCE INC.

Report: 04/2013

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SMART ♥ BALANCE INC.

Report: 04/2013

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Report: 04/2013

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SMART ♥ BALANCE INC.

Report: 04/2013

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SMART ♥ BALANCE INC.

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Report: 04/2013

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SMART ♥ BALANCE INC.

Report: 04/2013

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SMART ♥ BALANCE INC.

Report: 04/2013



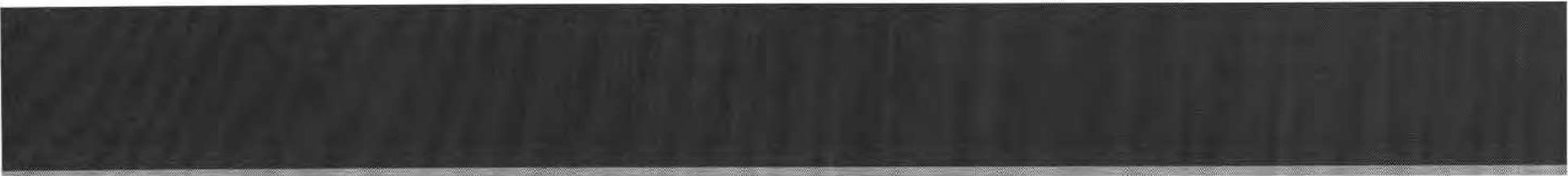
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SMART ♥ BALANCE INC.

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Attorneys at Law

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August 25, 2000

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 * ALSO ADMITTED IN DISTRICT OF COLUMBIA

Via Federal Express

Lucy B. Arant
Russ August & Kabat
12424 Wilshire Blvd.
Los Angeles, CA 90025

Re: BALANCE (Balance Bar Company)
U.S. Serial No.: 75/774542

Dear Ms. Barant:

We represent GFA Brands, Inc., the owner of the mark SMART BALANCE® for which GFA Brands owns United States Registrations Nos. 2,200,663 and 2,276,285. GFA Brands also owns the mark EARTH BALANCE® for which it owns United States Registration No. 2,237,867.

The SMART BALANCE® and EARTH BALANCE® marks have been used in connection with the marketing and sale of a number of products, including margarine, mayonnaise, cheese, shortening, cooking spray and oil. GFA Brands' SMART BALANCE® and EARTH BALANCE® marks are symbolic of extensive goodwill and consumer recognition built up through substantial amounts of time and effort in advertising and promotion.

It has come to our attention that Balance Bar Company is seeking to register the mark BALANCE (Serial No. 75-774542) for a number of products, including cheese, dairy based beverages, dips, butter, breakfast cereals and snack foods. It is not clear from

APPLICANT
 EXHIBIT 43
 BB v GFA
 AGREN BLANDO REPORTING
 No. 91196954

Lucy B. Aarant
August 25, 2000
Page 2

the limited trademark information we obtained whether Balance Bar has made use of BALANCE in commerce. However, use by Balance Bar of the BALANCE mark would cause confusion, deception or mistake among consumers. This likelihood of confusion gives rise to liability for trademark infringement and unfair competition under federal and state law. GFA Brands also believes that Balance Bar's use and registration of this name tends to dilute the distinctiveness of GFA Brands' BALANCE marks and could diminish their value and the goodwill associated with the marks.

We have brought GFA Brands' BALANCE marks to your attention at this time with the intention of avoiding an opposition or other legal proceedings. However, GFA Brands considers the infringement of its valuable trademark rights extremely serious and will take all available legal actions, including the filing of an opposition to protect and enforce its rights.

On behalf of GFA Brands, we kindly request that Balance Bar provide us, within fourteen (14) days of the date of mailing of this letter, with written assurances that it will not adopt or use BALANCE or pursue registration of BALANCE or any other confusingly similar variation thereof and will agree to expressly abandon application No. 75-774542.

Sincerely,

WELSH & KATZ, LTD.

By:


John L. Amerogi, Esq.

JLA/skb

cc: Robert Harris
Daniel R. Cherry, Esq.

** TOTAL PAGE.005 **

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GFASB019329

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July 12, 2006

BY FEDERAL EXPRESS

Mr. Bob Harris
President
GFA Brands, Inc.
211 Knickerbocker Road
Cresskill, NJ 07626

APPLICANT
EXHIBIT 44
BB v GFA
AGREN BLANDO REPORTING
No. 91196954

Re: Infringement of BALANCE® Trademark for Food Bars

Dear Mr. Harris:

We are outside counsel to Kraft Foods, Inc. and the Balance Bar Company ("Kraft"). Kraft is the owner of the famous BALANCE® and BALANCE BAR® brands for food and nutritional bars. The BALANCE® brand is the subject of approximately fifteen active BALANCE-formative federal registrations, most of which cover food bars, including U.S. Reg. Nos. 3,036,771 (BALANCE BAR), 2,745,850 and 2,221,309 (BALANCE), 2,868,192 (BALANCE OUTDOOR), 2,652,365 (BALANCE+), 2,636,101 (BALANCE GOLD), and 2,296,368 (40-30-30 BALANCE). Some of Kraft's BALANCE registrations are already incontestable under § 15 of the Lanham Act. Kraft also owns several pending BALANCE-formative trademark applications covering food bars.

The BALANCE® brand has become well-recognized by consumers through long, extensive, and exclusive use and advertising in commerce. As such, the BALANCE® mark is a very strong mark for food bars. In contrast, our client is not aware of a single third-party active federal trademark registration or use, other than by GFA Brands, Inc. ("GFA"), that covers food bars.

With this background in mind, Kraft recently learned that GFA has filed two pending BALANCE-formative U.S. trademark applications that, following amendments, cover "dried, ready to eat fruit and vegetable bars": US. Serial Nos. 78/554,482 (EARTH BALANCE) and 78/725,472 (FRUIT BALANCE). Kraft also recently learned that EARTH BALANCE food bars are now being sold in the marketplace, including in supermarkets that already carry Kraft's

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PROSKAUER ROSE LLP

Mr. Bob Harris
July 12, 2006
Page 2

BALANCE food bars. We note the EARTH BALANCE Statement of Use recently filed in the U.S. Patent and Trademark Office that alleges a November 1, 2005 first use in commerce date.

In view of Kraft's rights in the well-known and extremely valuable BALANCE® brand for food bars, Kraft is concerned about the consumer confusion that will be caused by GFA's EARTH BALANCE and FRUIT BALANCE food bars. Although Kraft inadvertently missed the opposition period for the EARTH BALANCE mark, it is Kraft's intention to petition to cancel this registration in the PTO, should the parties not be able to resolve this matter before the mark matures into a registration. Similarly, it is Kraft's intention to oppose the FRUIT BALANCE application once it is published. Kraft is also considering all other options at its disposal to protect and enforce its BALANCE® brand for food bars.

In this context, I enclose here an August 25, 2000 cease and desist letter from GFA's outside counsel to Kraft, which alleges that consumer confusion, deception, or mistake would result from Kraft's use of BALANCE and GFA's use of EARTH BALANCE on similar goods. There is no legitimate basis to take a contrary position now that it is GFA that is the second-comer to the marketplace for Kraft's core product for the BALANCE® brand, namely, food bars.

As you may know, Kraft and GFA were able to amicably resolve the trademark conflict that was the subject of GFA counsel's August, 2000 letter. With that background in mind, we offer you the opportunity to rectify this matter by providing us with your prompt written assurances, to be received no later than July 26, 2006, that GFA has immediately ceased all uses of EARTH BALANCE, FRUIT BALANCE, and any other BALANCE-formative marks in connection with food bars, and will not use any BALANCE-formative marks at any point in the future in connection with food bars. We also seek your assurances that GFA will expressly abandon its EARTH BALANCE and FRUIT BALANCE applications, and will not seek to register any BALANCE-formative trademarks that cover food bars in the future.

We look forward to your prompt written response.

Sincerely,


Brendan J. O'Rourke

Enclosure

cc: Demetra Merikas, Esq., Kraft Foods, Inc.

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