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

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TRADEMARK TRIAL AND
APPEAL BOARD

FITNESS FOODS, INC., and)
GFA BRANDS, INC.,)
)
Opposers,)
)
vs.)
)
ConAgra Brands, Inc.)
)
Applicant.)

Opposition No.
Application Serial No.: 76/111,753
Published: May 28, 2002
Mark: SMART CHEESE

U.S. Patent & TMO/c/TM Mail Rcpt. Dt. #57



08-06-2002

I hereby certify that this paper is being deposited with the United States Postal Service, postage prepaid, as Express Mail in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202 on this date.

8-6-02 Frank Frab

Date

Express Mail Label No.

EL90159642545

NOTICE OF OPPOSITION

Opposers, Fitness Foods, Inc. ("Fitness"), a Delaware corporation having a business address at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, and GFA Brands, Inc. ("GFA"), an Ohio corporation, having business at P.O. Box 397, 211 Knickerbocker Road, Cresskill, New Jersey 07626-0397, believe that they will be damaged by Applicant's registration of the mark SMART CHEESE, United States Trademark Application Serial No.: 76/111753, on the following grounds:

1. Opposers have for many years been engaged in the business of, *inter alia*, the manufacture, sale, distribution and promotion of food products throughout the United States. Opposers' products have been advertised and promoted throughout the United States, and through such efforts, Opposers have built up substantial good will and consumer recognition of its products through its

trademarks.

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2. GFA is the owner of United States Trademark Registration Nos.: 2,276,285 and 2,200,663 for SMART BALANCE for certain food products.

3. GFA is the owner of United States Trademark Registration No. 2,182,820 for SMART OIL for certain food products.

4. GFA is the owner of United States Trademark Registration No. 2,302,961 for SMART COW for certain food products.

5. Fitness is the owner of United States Registration No. 1,836,307 for SMART SPREAD for certain food products.

6. Fitness is the owner of United States Trademark Registration No. 2,084,664 for SMART SQUEEZE for certain food products.

7. Fitness is the owner of United States Trademark Registration No. 1,754,419 for SMART BEAT for certain food products.

8. Fitness is the owner of the United States Trademark Registration Nos. 2,045,728 and 1,933,384 for SMART SLICES for certain food products.

9. Fitness is the owner of United States Trademark Registration No. 1,810,146 for SMART MAYO for certain food products.

10. Opposers have made use of the aforementioned SMART BALANCE, SMART OIL, SMART BEAT, SMART MAYO, SMART SPREAD, SMART SLICES, SMART COW and SMART SQUEEZE marks through their related companies.

11. Notwithstanding Opposers' prior rights in and to the above-identified trademark registrations, Applicant has filed an application, Serial No. 76/111753 for registration of SMART CHEESE for "Soy based food products used as cheese substitutes" in International Class 29.

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART CHEESE and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART CHEESE mark or to withdraw its application Serial No. 76/111753.

13. The Applicant's SMART CHEESE mark is confusingly similar to the trademarks of Opposers and its use by Applicant on the goods stated in its application is likely to cause confusion, deception and mistake. Applicant's registration or use of SMART CHEESE interferes with Opposers' use of their marks and continued use or registration of SMART CHEESE by Applicant will seriously damage Opposers.

WHEREFORE, Opposers request that Application's Serial No. 76/111753 be refused registration; that no registration be issued to Applicant for the SMART CHEESE mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

FITNESS FOODS, INC. and
GFA BRANDS, INC.

August 6, 2002

By:


Daniel R. Cherry, Esq.

John L. Ambrogio, Esq.

Daniel J. Gurfinkel, Esq.

WELSH & KATZ, LTD.

120 South Riverside Plaza,

22nd Floor

Chicago, Illinois 60606

(312) 655-1500

Attorneys for Opposers

WELSH & KATZ, LTD.

Attorneys at Law

120 SOUTH RIVERSIDE PLAZA · 22ND FLOOR
CHICAGO, ILLINOIS 60606-3912

TELEPHONE (312) 655-1500
FACSIMILE (312) 655-1501

www.welshkatz.com

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8-6-02 John L. Ambrogi

Date

Express Mail Label No.

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THOMAS L. GEMMELL
LOUISE T. WALSH
CHARLES R. KRICKORIAN, Ph.D.
PAUL M. VARGO, Ph.D.

SHANNON L. NEBOLSKY, Ph.D.
RICHARD J. GURAK
J. ARON CARNAHAN
ERIK B. FLOM, Ph.D.
JOSEPH E. CWIK
IRENE M. REININGER
MAITREYA P. JANI
TERESA D. TAMBOLAS
DANIEL M. GURFINKEL
INDIRA SALADI
BRYAN C. WALLACE
ANDREA B. ELLMAN
MICHELE S. KATZ
JOHN R. GARRETT
NATALIE A. REMIEN

OF COUNSEL
LAURIE A. HAYNIE
JAMES J. MYRICK
THOMAS R. VIGIL

DONALD L. WELSH (1925-1998)

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

A. SIDNEY KATZ*
RICHARD L. WOOD*
JEROLD B. SCHNAYER
ERIC C. COHEN
JOSEPH R. MARCUS
GERALD S. SCHUR
GERALD T. SHEKLETON
JAMES A. SCHEER
DANIEL R. CHERRY
ROBERT B. BREISBLATT
JAMES P. WHITE
R. MARK HALLIGAN
HARTWELL P. MORSE, III
EDWARD P. GAMSON, Ph.D.
KARA E.F. CENAR
KATHLEEN A. RHEINTGEN
THOMAS W. TOLPIN*
ELLIOTT C. BANKENDORF
RICHARD W. MCLAREN, JR.
JOHN L. AMBROGI
JULIE A. KATZ
JON P. CHRISTENSEN
ERIC D. COHEN
WALTER J. KAWULA, JR.
PHILIP D. SEGREST, JR.
MITCHELL J. WEINSTEIN
LEONARD FRIEDMAN
STEVEN E. FELDMAN
JEFFREY W. SALMON

Box TTAB FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

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08-06-2002

Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc
Application No.: 76/111,753
Published: May 28, 2002
Our File No.: 1428/74696

Sir:

Enclosed is an original and two (2) copies of a Notice of Opposition with regard to the above-referenced application and Welsh & Katz, Ltd Check No. 076030 in the amount of \$600.00 to cover the filing fee for filing the Notice of Opposition in the name Fitness Foods, Inc. and GFA Brands, Inc.

The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to Deposit Account No. 23-0920. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to the above-mentioned Deposit Account. Two duplicate copies of this letter are enclosed.

Very truly yours,

WELSH & KATZ, LTD.

By:

John L. Ambrogi
John L. Ambrogi, Esq.

JLA/skb
Enclosures