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09-05-2002

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

FITNESS FOODS, INC., and)
GFA BRANDS, INC.,)

Opposition No.

Opposers,)

Application Serial No.: 75/842,193

vs.)

Published: May 14, 2002

ConAgra Brands, Inc.)

Mark: SMART LINKS

Applicant.)

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

9/5/02: Helen Mann

Date
Express Mail Label No.
EL7799888845

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 LINKS, United States Trademark Application Serial No.: 75/842,193, 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

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. 75/842,193 for registration of SMART LINKS for "formed textured vegetable protein for use as a meat extender or meat substitute" in

International Class 29.

12. Opposer has written to Applicant's listed attorney of record requesting that Applicant not adopt or use SMART LINKS and to abandon its application for federal registration. Applicant has refused to agree to discontinue using the SMART LINKS mark or to withdraw its application Serial No. 75/842,193.

13. The Applicant's SMART LINKS 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 LINKS interferes with Opposers' use of their marks and continued use or registration of SMART LINKS by Applicant will seriously damage Opposers.

WHEREFORE, Opposers request that Application's Serial No. 75/842,193 be refused registration; that no registration be issued to Applicant for the SMART LINKS mark; and that this opposition be sustained in favor of Opposers.

Respectfully submitted,

FITNESS FOODS, INC. and
GFA BRANDS, INC.

September 5, 2002

By: 

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09-05-2002

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September 5, 2002

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* ALSO ADMITTED IN DISTRICT OF COLUMBIA

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, 2000 Crystal Drive, Arlington, VA 22202 on this date.

Date 9/5/02 - Ellen Mann
 Express Mail Label No. EL77798808945

Box TTAB FEE
 Commissioner for Trademarks
 2900 Crystal Drive
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Re: Fitness Foods, Inc. and GFA Brands, Inc. v. ConAgra Brands, Inc.
 Application No.: 75/842,193
 Published: May 14, 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 Nos. 076744 (\$300) and 076747 (\$300) 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. Ambrogio
 John L. Ambrogio, Esq.

JLA/skb
 Enclosures

TRADEMARK TRIAL AND APPEAL BOARD
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