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

Proceeding	91196358
Party	Plaintiff ProMark Brands Inc.
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Submission	Motion to Consolidate
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Date	01/13/2011
Attachments	DOC010.PDF ( 3 pages )(80127 bytes )

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

PROMARK BRANDS INC.,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

**Opposition Nos. 91194974 & 91196358**

U.S. Trademark Application 77/864,305  
For the Mark **SMART BALANCE**  
Published in the Official Gazette on April 20, 2010

U.S. Trademark Application 77/864,268  
For the Mark **SMART BALANCE**  
Published in the Official Gazette on August 10, 2010

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**MOTION TO CONSOLIDATE PROCEEDINGS AND FOR CONSOLIDATED  
SCHEDULE**

Pursuant to Fed. R. Civ. P. 42(a) and Trademark Rule 2.116(a), ProMark Brands Inc. (“ProMark”) moves to consolidate Opposition No. 91194974 and Opposition No. 91196358 (the “Smart Balance Oppositions”) and hereby requests that the Board issue an Order approving of this Motion to Consolidate Proceedings and modifying the schedules for the Smart Balance Oppositions so that the discovery and trial dates for the consolidated proceedings will be set as follows:

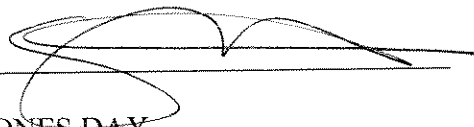
Initial Disclosures Due:	2/11/2011
Expert Disclosures Due:	6/10/2011
Discovery Closes:	7/10/2011
Plaintiff’s Pretrial Disclosures:	8/25/2011
Plaintiff’s 30-day Trial Period Ends:	10/8/2011
Defendant’s Pretrial Disclosures:	10/23/2011
Defendant’s 30-day Trial Period Ends:	12/7/2011
Plaintiff’s Rebuttal Disclosures:	12/22/2011
Plaintiff’s 15-day Rebuttal Period Ends:	1/22/2012

The Smart Balance Oppositions involve a common question of law and fact and consolidation of the proceedings will promote administrative efficiency and save the parties significant time, effort and expense. On December 21, 2010, ProMark filed a Motion for Suspension With Consent because the parties were engaged in settlement discussions. Counsel of record for GFA Brands, Inc. ("Applicant") and counsel for ProMark subsequently attempted to settle the Smart Balance Oppositions but were unsuccessful. The parties had an agreement that if the settlement discussions were unsuccessful, ProMark would file a Joint Motion to Consolidate the Smart Balance Oppositions and for a Consolidated Schedule to promote efficiency in these proceedings. Further, Applicant filed a Notice of Substitution of Counsel on January 12, 2011 in both of the Smart Balance Oppositions.

It is the expectation of ProMark that the Consolidated Schedule detailed above will allow Applicant's new counsel time to review the Smart Balance Oppositions and proceed with a single, consolidated schedule.

Respectfully submitted this 13th day of January, 2011:

By \_\_\_\_\_

  
JONES DAY  
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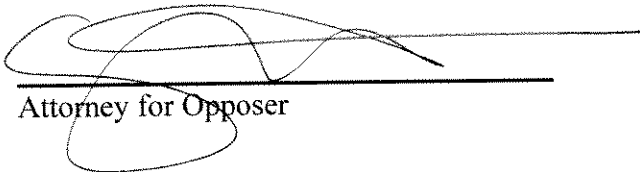
Attorneys for Opposer  
ProMark Brands Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, MOTION TO CONSOLIDATE PROCEEDINGS AND FOR CONSOLIDATED SCHEDULE was served on Applicant, via United States First Class Mail in an envelope addressed to:

Marta S. Levine  
David R. Cross  
Johanna M. Wilbert  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dated this 13th day of January, 2011

  
\_\_\_\_\_  
Attorney for Opposer