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

Proceeding	91196963
Party	Plaintiff Kellogg North America Company
Correspondence Address	LISABETH H COAKLEY HARNESS DICKEY & PIERCE PLC 5445 CORPORATE DRIVE, SUITE 200 TROY, MI 48098 UNITED STATES coakley@hdp.com, tjcomparoni@hdp.com
Submission	Motion to Consolidate
Filer's Name	Lisabeth H. Coakley
Filer's e-mail	coakley@hdp.com, tjcomparoni@hdp.com
Signature	/lhc/
Date	04/11/2011
Attachments	91196963, 91198489 SMART BALANCE 307 041111.pdf (3 pages)(86750 bytes)

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

Kellogg North America Company)	
Opposer,)	
v.)	Opposition Nos.91196963 and 91198489
GFA Brands, Inc.)	Serial Nos. 77/864279; 77/864206 and
Applicant.)	77/864268
)	Mark: SMART BALANCE
)	

CONSENTED MOTION TO CONSOLIDATE PROCEEDINGS

Opposer, Kellogg North America Company (“Kellogg”), respectfully requests that the above proceedings be consolidated pursuant to Fed. R. Civ. P. 42(a) and T.B.M.P. §511. Marta S. Levine, Counsel for Applicant, consented to this motion to consolidate proceedings during the initial discovery conference held on April 6, 2011.

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. T.B.M.P. §511. In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. *Id.* See also, e.g., *World Hockey Ass’n v. Tudor Med. Prods. Corp.*, 185 U.S.P.Q. 246 (T.T.A.B. 1975).

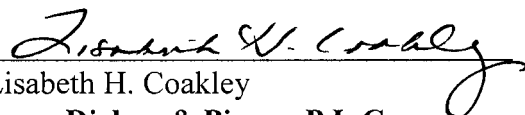
Consolidation of Opposition Nos. 91196963 and 91198489 is appropriate because they present common questions of law and fact. The parties in each proceeding are the same, the marks are identical, and the goods which are the subject of each proceeding are substantially related. Additionally, Opposer has challenged applicant’s right of registration based on its ownership of substantially similar registered marks. Consequently, it is believed the proceedings may be presented on the same record without appreciable inconvenience or confusion. *World Hockey Ass’n.*

185 U.S.P.Q. at 248. Furthermore, consolidation will be equally advantageous to both parties in the avoidance of duplication of effort, loss of time, and the extra expense involved in conducting the proceedings alternately. *Id.*

Since the proceedings involve common questions of law and fact and since consolidation will result in a savings in time, effort, and expense and will be equally advantageous to both parties and the Board and since no prejudice will be caused by the consolidation of these proceedings, it is respectfully requested that this Consented Motion to Consolidate Opposition Nos. 91196963 and 91198489 be granted.

Respectfully submitted,

Dated: April 11, 2011

By: 
Lisabeth H. Coakley
Harness, Dickey & Pierce, P.L.C.
Kellogg North America Company
5445 Corporate Drive
Troy, Michigan 48098
(248) 641-1600

Attorneys for Opposer, Kellogg North
America Company

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Consented Motion to Consolidate Proceedings** has been served on the following counsel for Applicant, GFA Brands, Inc., by mailing said copy on April 11, 2011, via First Class Mail, postage prepaid to:

Marta S. Levine
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497



Timothy J. Comparoni