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Filing date: **09/29/2011**

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

Proceeding	92054315
Party	Plaintiff Revive Franchising LLC
Correspondence Address	CARL OPPEDAHL OPPEDAHL PATENT LAW FIRM LLC 12000 N PECOS ST #252 WESTMINSTER, CO 80234 UNITED STATES docket-oppedahl@oppedahl.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Carl Oppedahl
Filer's e-mail	docket-oppedahl@oppedahl.com
Signature	/s/
Date	09/29/2011
Attachments	20110927 Motion for Leave to File Second Amended Petition to Cancel.pdf ( 2 pages )(55403 bytes ) Untitled 1.pdf ( 1 page )(33667 bytes ) 20110926 Second Amended Petition to Cancel.pdf ( 12 pages )(84828 bytes ) 20110912-Exhibits.pdf ( 51 pages )(8579833 bytes )

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

Registration No. 3,544,234	)	
	)	
<u>REVIVE FRANCHISING LLC,</u>	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Cancellation No. 92054315
THE FRS COMPANY,	)	
	)	
Registrant.	)	
	)	
	)	
	)	
_____	)	

**PETITIONER’S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION TO  
CANCEL**

Petitioner REVIVE FRANCHISING, LLC hereby moves the Board for an Order permitting it to file a Second Amended Petition to Cancel pursuant to Fed. R. Civ. P. 15(a) to remove the fifth cause of action for fraud.

Pursuant to TBMP § 507.02, “the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties.”

Petitioner submits that permitting it to further amend its Petition to Cancel will neither prejudice Registrant nor violate settled law.

Petitioner attaches a copy of its proposed Second Amended to Cancel hereto as Exhibit A pursuant TBMP § 507.01.

WHEREFORE, Petitioner respectfully requests that the Board grant this Motion for Leave to File Second Amended Petition to Cancel.

Respectfully submitted this 29th day of September 2011.

OPPEDAHL PATENT LAW FIRM LLC

/s/

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ATTORNEY FOR PETITIONER  
REVIVE FRANCHISING, LLC

Certificate of Service

I certify that the attached papers are being served upon the defendant/registrant, as follows:

THE FRS COMPANY  
101 LINCOLN CENTRE DRIVE, SUITE 500  
FOSTER CITY, CA 94404

Additionally, at the direction of the Board in a certain Order dated September 16, 2011, the attached papers are also being served upon an attorney who has not appeared in this proceeding, to wit:

Jonathan A. Hyman  
Knobbe Martens Olson & Bear LLP  
10100 Santa Monica Blvd., 16th Floor  
Los Angeles, CA 90067

The above-mentioned service is by US Postal Service, first-class or priority mail, this 29<sup>th</sup> day of September, 2011.

/s/

Carl Oppedahl

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<u>REVIVE FRANCHISING LLC,</u>	)	
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THE FRS COMPANY,	)	
	)	
Registrant.	)	
	)	
	)	
	)	
_____	)	

**SECOND AMENDED PETITION TO CANCEL**

Petitioner REVIVE FRANCHISING, LLC (“Petitioner”), a limited liability corporation duly organized and existing under the laws of the State of Colorado with its principal place of business located at 945 West Kenyon Avenue, Suite 200, Englewood, Colorado 80110 hereby petitions to cancel Registration No. 3,544,234.

To the best of Petitioner’s knowledge, the name and address of the current owner of Registration No. 3,544,234 is The FRS COMPANY (“Registrant”), 101 Lincoln Centre Drive, Suite 500, Foster City, California 94404.

The above-identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

As grounds in support of its petition, Petitioner asserts as follows:

1. On March 8, 2007, Registrant’s predecessor, Creative Concoctions LLC, filed an application under Section 1(b) to register the mark Healthy Energy for “Non-alcoholic fruit juice beverages” in International Class 032. That application was assigned Application No. 77/126,151 (“the ‘151 application”).

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