

ESTTA Tracking number: **ESTTA422771**

Filing date: **08/01/2011**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Revive Franchising LLC		
Entity	Corporation	Citizenship	Colorado
Address	945 West Kenyon Avenue, Suite 200 Englewood, CO 80110 UNITED STATES		

Correspondence information	Oppedahl Patent Law Firm LLC 12000 Pecos Street #252 Westminster, CO 80234 UNITED STATES docket-oppedahl@oppedahl.com Phone:303-252-8800		
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Registration Subject to Cancellation

Registration No	3544234	Registration date	12/09/2008
Registrant	THE FRS COMPANY 101 LINCOLN CENTRE DRIVE SUITE 500 FOSTER CITY, CA 94404 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2007/01/00 First Use In Commerce: 2007/01/00 All goods and services in the class are cancelled, namely: Non-alcoholic fruit juice beverages
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Attachments	20110801 Petition to Cancel as Filed.pdf (12 pages)(85513 bytes) 20110801-Exhibits.pdf (49 pages)(8020853 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/
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Name	Oppedahl Patent Law Firm LLC
Date	08/01/2011

**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.
THE FRS COMPANY,)	
)	
Registrant.)	
)	
)	
<hr style="width: 25%; margin-left: 0;"/>)	

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”).

2. On June 20, 2007, the United States Patent and Trademark Office (“USPTO”) issued an office action for the ‘151 application. In that office action, the examiner refused registration of Healthy Energy as merely descriptive under Section 2(e)(1).

3. On December 20, 2007, counsel for Creative Concoctions responded to the outstanding office action, arguing: “The examining attorney has reviewed the mark and considered it descriptive. However, the attorney has failed to provide any evidence that HEALTHY ENERGY is descriptive for a drink. How can Energy be healthy. The mark is suggestive that the properties in the drink are good for you and keep you active. The mark is suggestive not descriptive.”

4. On April 2, 2008, the USPTO mailed a Notice of Publication under §12(a) to counsel for Creative Concoctions.

5. On July 15, 2008, the USPTO issued a Notice of Allowance for the ‘151 application.

6. On October 31, 2008, counsel for Registrant filed a statement of use, including a declaration signed by Registrant’s CEO, Maigread Eichten, alleging a first use in commerce date of January 00, 2007 and including a specimen allegedly showing “a(n) Printout from Applicant's website which show the mark in connection the goods, and includes information necessary to order the goods in accordance with TMEP § 904.06(a).”

7. A January 1, 2007 archive of Registrant’s website, <http://www.frs.com>, reveals a previous owner, Firstline Mobility. See Exhibit A, Archive of <http://www.frs.com> dated January 1, 2007.

8. A January 26, 2007 archive of <http://www.frs.com> continues to show a webpage for Firstline Mobility. See Exhibit B, Archive of <http://www.frs.com> dated January 26, 2007.
9. WHOIS domain registration information indicates that Registrant acquired <http://www.frs.com> on February 1, 2007. See Exhibit C, WHOIS domain registration for frs.com.
10. A February 16, 2007 archive of <http://www.frs.com> indicates that the webpage then belonged to Registrant. See Exhibit D, Archive of <http://www.frs.com> dated February 16, 2007.
11. An April 12, 2007 archive of <http://www.frs.com> prominently displays a set of containers labeled “FRS® all natural antioxidant health drink”. The top of the container includes product information such as “non-carbonated” and “healthy energy”. See Exhibit E, Archive of <http://www.frs.com> dated April 12, 2007.
12. A January 26, 2007 archive of the main page of Registrant’s second website, <http://www.frsenergy.com>, now defunct, reveals little. See Exhibit F, Archive of <http://www.frsenergy.com> dated January 26, 2007.
13. A February 5, 2007 archive of the FRS Online Store, available from the “Where to get FRS” link on <http://www.frsenergy.com>, includes detailed product information. See Exhibit G, Archive of FRS Online Store dated February 5, 2007.
14. Upon information and belief, the term “healthy energy” is not used on the February 5, 2007 webpage. See Exhibit G, Archive of FRS Online Store dated February 5, 2007.
15. On the February 5, 2007 webpage, the words “Stock Change in Progress Available Feb 5th” are written over the “Ready-to-Drink” products. See Exhibit G, Archive of FRS Online Store dated February 5, 2007.

16. A January 12, 2007 Archive of the FRS Ready to Drink Beverage, located under the product menu, includes a picture of the ready-to-drink bottle. See Exhibit H, FRS Ready to Drink Beverage dated January 12, 2007.

17. The FRS Ready to Drink Beverage bottle does not appear to include the term “healthy energy”. See Exhibit H, FRS Ready to Drink Beverage dated January 12, 2007.

18. A February 24, 2007 archive of the FRS Online Store available from <http://www.frsenergy.com> shows the updated packaging for the ready-to-drink product. See Exhibit I, Archive of FRS Online Store dated February 24, 2007.

19. Selecting the ready-to-drink product provides a closer view of the product packaging, which reads “FRS all natural antioxidant health drink” or “FRS low calorie antioxidant health drink”. See Exhibit J, Archive of FRS Ready-to-Drink Beverages dated February 20, 2007.

20. A June 6, 2007 archive of <http://www.frsenergy.com> prominently displays a set of containers labeled “FRS® all natural antioxidant health drink”. The top of the container includes product information such as “non-carbonated” and “healthy energy”. See Exhibit K, Archive of <http://www.frsenergy.com> dated June 6, 2007.

21. A June 30, 2007 archive of <http://www.frsenergy.com> shows the addition of “FRS” and “healthy energy” to the website header. See Exhibit L, Archive of <http://www.frsenergy.com> dated June 30, 2007.

22. An article from the Functional Drinks Newsletter dated February 20, 2007, available on <http://www.frs.com>, shows the “FRS all natural antioxidant health drink” and “FRS low calorie antioxidant health drink” packaging. See Exhibit M, Functional Drinks article.

23. An article from the Santa Barbara News-Press dated February 22, 2007, available on <http://www.frs.com>, shows the “FRS all natural antioxidant health drink” and “FRS low calorie antioxidant health drink” packaging. See Exhibit N, Santa Barbara News-Press article.

24. An article from USA Today dated April 11, 2007, available on <http://www.frs.com>, shows the “FRS all natural antioxidant health drink” and “FRS low calorie antioxidant health drink” packaging. See Exhibit O, USA Today article.

25. A February 11, 2008 archive of <http://www.frs.com> includes the phrase “healthy energy” after the FRS mark. The phrase “healthy energy” appears to have the registered trademark symbol after it. See Exhibit P, Archive of <http://www.frs.com> dated February 11, 2008.

26. In the February/March 2006 issue of She Knows Diet & Fitness Magazine, the product sold under the ‘234 registration is described as a “healthier energy drink alternative”. See Exhibit Q, She Knows article.

27. The article attached as Exhibit Q is available on Registrant’s website.

28. An article from Forbes.com dated March 30, 2006 describes the product sold under the ‘234 registration as an “an antioxidant energy drink” which “contains healthful benefits.” See Exhibit R, Forbes.com article.

29. The article attached as Exhibit R is available on Registrant’s website.

30. An article from Ask Hungry Girl dated May 10, 2006 describes the product sold under the ‘234 registration as “basically a healthy (and delicious) drink that's packed with vitamins and antioxidants and gives you tons of energy.” See Exhibit S, Ask Hungry Girl article.

31. The article attached as Exhibit S is available on Registrant’s website.

32. In a press release dated March 8, 2007, Registrant states that the product sold under the '234 registration "was recognized by the Beverage Innovations Awards for its health benefits including improved mental and physical performance, reduced fatigue and improved concentration." See Exhibit T, March 8, 2007 press release.

33. The March 8, 2007 press release further describes the product sold under the '234 registration as "a scientifically developed, patented formula that combines nature's most powerful antioxidants and essential vitamins to provide a sustained, healthy energy boost and long-term antioxidant health protection." See Exhibit T, March 8, 2007 press release.

34. A press release from Registrant dated September 24, 2007 is titled "HEALTHYENERGY.COM GOES LIVE TO PROVIDE CONSUMERS WITH A HEALTHIER ALTERNATIVE IN ENERGY DRINKS". See Exhibit U, September 24, 2007 press release.

35. The September 24, 2007 press release describes Registrant as "a developer and distributor of healthy energy beverages". See Exhibit U, September 24, 2007 press release.

36. The September 24, 2007 press release includes the following quote from Maigread Eichten, Registrant's president and CEO, "HealthyEnergy.com is a great way for us to help stressed out office workers, harried moms, athletes and frequent travelers find a trusted and functional source of healthy, sustained energy[.]" See Exhibit U, September 24, 2007 press release.

37. An article from Beverage World Magazine dated February 2008, available at <http://www.frs.com>, includes a photograph of new product cans which then read "FRS healthy energy". In the article, Maigread Eichten, President and CEO of The FRS Company, acknowledges that "this isn't the first beverage company that is offering energy the healthy way." The article notes that a new marketing campaign set to launch in February 2008 includes the

slogan “Don’t Crash. Drink Healthy Energy.” The article goes on to state that, according to Ms. Eichten, “the company redesigned the cans to include the words ‘healthy energy.’” See Exhibit V, Beverage World article dated February 2008.

38. On November 6, 2008, the USPTO issued a Notice of Acceptance of Statement of Use.

39. On December 9, 2008, the USPTO registered the ‘151 application as Registration Number 3,544,234 (“the ‘234 registration”).

40. A Google search for the exact phrase “healthy energy” returns approximately 2,370,000 results. Notably, the first four pages of results include 11 healthy energy drinks (FRS, Zipfizz, Verve!, MonaVie EMV, Xe, DrinkACT, Fruit of the Spirit, AdvoCare, efusjon, Xocai Power, ElectriFire), one healthy energy drink mix (NuPlus), one healthy energy drinkable supplement (Fatigue Fighter), one healthy energy bar (Luna), one healthy energy mint (Revive) and one healthy energy supplement (Shaklee) on the first four pages alone. Additionally, one of the returned articles is a guide to “Best Healthy Energy Drinks”, and another is a blog regarding “Healthy Energy Drinks”. See Exhibit W, Google search results for the exact phrase “healthy energy”.

41. A Google search for the words “healthy energy” returns approximately 20,100,000 results, as well as suggested related searches which include “healthy energy drink”. Notably, the first four pages of results include 11 healthy energy drinks (FRS, Zipfizz, Verve!, MonaVie EMV, Xe, DrinkACT, Fruit of the Spirit, AdvoCare, efusjon, Xocai Power, ElectriFire), one healthy energy drink mix (NuPlus), one healthy energy drinkable supplement (Fatigue Fighter), one healthy energy bar (Luna), and one healthy energy mint (Revive) on the first four pages alone. Additionally, one of the returned articles is a guide to “Best Healthy Energy

Drinks”. Additionally, one of the returned articles is a guide to “Best Healthy Energy Drinks”, and another is a blog regarding “Healthy Energy Drinks”. See Exhibit X, Google search results for the words “healthy energy”.

42. The functional beverage industry includes four main market segments: hydration; energy/rejuvenation; health and wellness; and weight management. See Exhibit Y, Wikipedia article regarding “functional beverages”, for example.

FIRST CAUSE OF ACTION

43. The term for which registration has been obtained is a slogan which is merely descriptive or informational.

44. The mark is used in a manner that merely informs the potential purchaser of the features of the goods, namely that they provide “healthy energy”.

SECOND CAUSE OF ACTION

45. The term for which registration has been obtained is a common laudatory phrase and/or statement that is ordinarily used in the relevant industry.

46. The volume of results returned in a Google search for the term “healthy energy” demonstrates that “healthy energy” is a common laudatory phrase. See Exhibits W and X, for example.

47. The fact that multiple results relate to energy drinks demonstrates the popularity of the phrase “healthy energy” in the relevant industry.

THIRD CAUSE OF ACTION

48. The term for which registration has been obtained is merely descriptive.

49. “Healthy Energy” merely identifies the function or purpose of the product. The mark is used on energy drinks which are intended to provide “healthy energy”.

50. Further, “Healthy Energy” is a laudatory term that attributes quality to goods, and is therefore merely descriptive under §2(e)(1).

51. The article attached as Exhibit O, for example, refers to the product sold under the ‘234 registration as both an “energy drink” and a beverage that “is a lot healthier than most.”

52. The article attached as Exhibit V maintains that “this isn’t the first beverage that is offering energy the healthy way.”

53. The term “healthy energy” is a method of describing the product sold under the ‘234 registration in relation to generally accepted market descriptions that consumers, marketers and competitors can understand so they know what the product is.

54. As illustrated by Exhibit Y, the phrase “healthy energy” encompasses two generally recognized markets, health/wellness and energy/rejuvenation.

55. As demonstrated by Exhibits W and X, “healthy energy” is a standard industry product description.

FOURTH CAUSE OF ACTION

56. The term for which registration has been obtained is generic.

57. Registrant sells energy drinks under the ‘234 registration.

58. “Energy drink” is a generic term, as demonstrated by Exhibits O and V, for example, which make multiple references to the energy drink market. “Healthy” is likewise a generic term.

59. The combination of “healthy” and “energy” into a composite phrase does nothing to reduce the generic significance of the words.

60. The article attached as Exhibit V documents FRS's CEO, Maigread Eichten, acknowledging that FRS "isn't the first beverage company that is offering energy the healthy way."

61. Moreover, a Google search for the phrase "healthy energy" returns hits for 11 healthy energy drinks, one healthy energy drink mix, one healthy energy drinkable supplement, one healthy energy bar, one healthy energy mint and one healthy energy supplement on the first four pages alone. See Exhibits W and X.

FIFTH CAUSE OF ACTION

62. The '234 registration was obtained by fraud.

63. A February/March 2006 issue of She Knows Diet & Fitness Magazine, the product sold under the '234 registration is described as a "healthier energy drink alternative". See Exhibit Q, She Knows article.

64. A March 30, 2006 article describes the product sold under the '234 registration "an antioxidant energy drink" which "contains healthful benefits." See Exhibit R, Forbes.com article.

65. A May 10, 2006 article describes the product sold under the '234 registration as a "healthy...drink...that gives you tons of energy." See Exhibit S, Ask Hungry Girl article.

66. On March 8, 2007, Registrant described the product sold under the '234 registration as having "health benefits including improved mental and physical performance, reduced fatigue and improved concentration." See Exhibit T, March 8, 2007 press release.

67. On March 8, 2007, Registrant described the product sold under the '234 registration as providing a "healthy energy boost". See Exhibit T, March 8, 2007 press release.

68. On September 24, 2007, Registrant described the product sold under the '234 registration as a "healthier alternative in energy drinks". See Exhibit U, September 24, 2007 press release.

69. On September 24, 2007, Registrant described itself as "a developer and distributor of healthy energy beverages". See Exhibit U, September 24, 2007 press release.

70. On September 24, 2007, Registrant described the product sold under the '234 registration as a "functional source of healthy, sustained energy[.]" See Exhibit U, September 24, 2007 press release.

71. December 20, 2007, counsel for Creative Concoctions responded to a descriptive refusal with the statement, "How can energy be healthy."

72. In February 2008, Registrant acknowledged that "this isn't the first beverage company that is offering energy the healthy way." See Exhibit V, Beverage World article dated February 2008.

73. The cited Exhibits demonstrate that Registrant not only knew energy could be described as healthy, but that it actively markets its product as providing a healthy source of energy.

74. Therefore Registrant, through its attorney, knowingly made false, material misrepresentations of fact in procuring the '234 registration with the intent to defraud the USPTO.

WHEREFORE, Petitioner prays that the registration be cancelled.

Respectfully submitted this first day of August 2011.

OPPEDAHL PATENT LAW FIRM LLC

/s/

Carl Oppedahl
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ATTORNEY FOR PETITIONER
REVIVE FRANCHISING, LLC

INTERNET ARCHIVE
Wayback Machine BETA

http://www.frs.com/

287 captures
7 Oct 97 - 18 Feb 10

NOV JAN FEB
2005 2007 2008

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We thank you for visiting us and hope that you find it useful. Whether you are moving your company across the globe or your family to a new home around the corner, Firstline provides extensive relocation, real estate, and financing consulting services.

Our Mission



Provide impartial, innovative, accurate and timely solutions and consulting to Corporations and Individual Families that need to relocate, acquire and/or dispose of real estate, or require financial solutions.

Exhibit A



Firstline Mobility

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- Corporate Services
- Relocation
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- Relocation
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We thank you for visiting us and hope that you find it useful. Whether you are moving your company across the globe or your family to a new home around the corner, Firstline provides extensive relocation, real estate, and financing consulting services.

Our Mission



Provide impartial, innovative, accurate and timely solutions and consulting to Corporations and Individual Families that need to relocate, acquire and/or dispose of real estate, or require financial solutions.



IMAGE NOT
AVAILABLE



Current Registrar: REGISTER.COM, INC.
IP Address: 67.215.235.132 (ARIN & RIPE IP search)
Record Type: Domain Name
Server Type: IIS 6
Lock Status: clientTransferProhibited
WebSite Status: Active

The data in Register.com's WHOIS database is provided to you by Register.com for information purposes only, that is, to assist you in obtaining information about or related to a domain name registration record. Register.com makes this information available "as is," and does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone; or (2) enable high volume, automated, electronic processes that apply to Register.com (or its systems). The compilation, repackaging, dissemination or other use of this data is expressly prohibited without the prior written consent of Register.com. Register.com reserves the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.

Registrant:

The FRS Company
Mark Costigan
101 Lincoln Centre Dr Suite 500
Foster City, CA 94404
US
Phone: +1.6502272223
Email: rmahle@frs.com

Registrar Name....: Register.com
Registrar Whois...: whois.register.com
Registrar Homepage: www.register.com

Domain Name: frs.com
Created on.....: 2007-02-01
Expires on.....: 2016-04-23

Administrative Contact:

The FRS Company
Mark Costigan
101 Lincoln Centre Dr Suite 500
Foster City, CA 94404
US
Phone: +1.6502272223
Email: rmahle@frs.com

Technical Contact:

Registercom
Domain Registrar
575 8th Avenue
New York, NY 10018
US
Phone: +1.9027492701
Email: domainregistrar@register.com

Exhibit C

DNS Servers:

ns11.dnsmadeeasy.com
ns12.dnsmadeeasy.com
ns10.dnsmadeeasy.com
ns13.dnsmadeeasy.com

Visit AboutUs.org for more information about frs.com

AboutUs: frs.com

Register your domain name at http://www.register.com

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

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Search

INTERNET ARCHIVE
WayBackMachine BETA

287 captures
7 Oct 97 - 18 Feb 10

JAN FEB MAR
2006 2007 2008

16

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These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease. Individual results vary

Exhibit D

WHAT DRIVES YOU?

LANCE ARMSTRONG
 7-time Tour de France winner
 partners with FRS

FRS
 antioxidant health drink
 for optimal performance*

all natural
 100% natural
 calorie

lemon lime
 orange
 wild berry

HEALTHY ENERGY
 FRS FREE TRIAL

To Order By Phone
 Call: 877-377-4868

If you are looking for FirstLine Mobility,
 please [click here](#)

As used by the
 cast and crew of **24**

FRS Supports:
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 LANCE ARMSTRONG FOUNDATION

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Exhibit E



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Exhibit F



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** Autoship free shipping is Ground,
Continental USA only

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Stock Change
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Available
Feb 5th



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trial of FRS

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FRS Ready to Drink Beverage

If you like your drinks in a grab and go form, then FRS ready to drink is for you. You can take the 10.5 oz plastic bottles anywhere and the sustained energy and health benefits of FRS will always be close at hand. Available on our website in 12 count cases.

Flavors:	Regular Orange, Orange Low Calorie, Lemon Lime, Wild Berry Low calorie
Bottle Size:	10.5oz
Servings per bottle:	1
Pack size:	12 bottles
Ingredients & Nutritional Facts:	View

[Why FRS works](#) | [Products](#) | [Research](#) | [Company](#) | [Testimonials](#)

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These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease. Individual results vary

Exhibit H



MY BASKET



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- Customer Support
- View My Orders
- Login
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See all the FRS Products in one convenient page



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CONCENTRATE



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CHEWS



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DRINK MIX POWDERS



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New Customers can get a FREE 7-day trial of FRS

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CLICK HERE for more information about FRS products

RETURN TO MAIN STORE PAGE

MY ACCOUNT

MY BASKET

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- Shipping, Return & Privacy Policy
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* AutoShip free shipping is Ground, Continental USA only and does not include single AutoShip items or Ready-to-Drink products

FRS Ready-to-Drink Beverages

Multi-Packs of 11 FL OZ cans available in a variety of flavors

For as little as:
\$2.63 per can



If you like your drinks in a grab and go form, then FRS ready-to-drink is for you. Available in cases:

- all natural orange
- all natural lemon-lime
- low-cal wild berry
- low-cal orange

Combine any 3 items for a 5% discount or combine any 4 items for a 10% discount

Sorry, **No Free Shipping** on ready-to-drink products, but call 877-377-4968 to ask about our monthly delivery plan



all natural orange all natural lemon lime low-calorie peach mango low-calorie wild berry low-calorie orange

* Single can price is based on 4 x 24-pack (delivered) including Ground, Continental USA shipping.

What is AutoShip?

Enter quantities and click the "Add to Cart" button to place items into your shopping cart

FRS Ready-to-Drink - Regular Orange 24 cans AutoShip Now! -- \$52.75	Qty: <input type="text"/>
FRS Ready-to-Drink - Low Calorie Orange 24 cans AutoShip Now! -- \$52.75	Qty: <input type="text"/>
FRS Ready-to-Drink - Lemon Lime 24 cans AutoShip Now! -- \$52.75	Qty: <input type="text"/>
FRS Ready-to-Drink - Low Calorie Wild Berry 24 cans AutoShip Now! -- \$52.75	Qty: <input type="text"/>
FRS Ready-to-Drink - Low Calorie Peach Mango 24 cans AutoShip Now! -- \$52.75	Qty: <input type="text"/>

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HEALTHY ENERGY

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FRS antioxidant health drink
all natural
for optimal performance*

- lemon lime
- orange
- low calorie wild berry

FRS antioxidant health drink cans: lemon lime, orange, low calorie wild berry.

Exhibit K



FRS

healthy energy

Why FRS works

Products

Lifestyle

Research

Company

Buy Online

Find a Local Store



WHAT DRIVES YOU?

LANCE ARMSTRONG
7-time Tour de France winner

FRS antioxidant health drink
all natural
lemon lime
antioxidant health drink
all natural
orange
antioxidant health drink
all natural
low calorie
wild berry

HEALTHY ENERGY

FRS FREE TRIAL

Exhibit L



Antioxidant functionality meets eco-friendly packaging

In many ways, health-conscious and eco-friendly consumers have similar desires; both want products that are sourced naturally, be it for the benefit of health or the environment, or both. As the movement towards wellness gathers pace, so do the trends towards green packaging, waste reduction and lowering carbon footprints.

In terms of green developments in the functional drinks sector, US-based **New Sun Nutrition**, manufacturer of a range of performance-enhancing products under the FRS (Free Radical Scavenging) brand name, has unveiled a RTD version of its antioxidant health drink. This is packaged in a recyclable can with low production emissions.

Other products in the FRS range include a concentrate called FRS Plus, a powder mix as well as 'health chews', all of which feature a patented formula combining flavanoid antioxidants (quercetin and green tea catechins) with vitamins B, C and E, and metabolic enhancers.

As with all the products in the FRS line-up, the new RTD version contains only natural ingredients. It is available in orange, lemon-lime as well as low-calorie orange, peach-mango and wild berry

variants, and provides the same antioxidant and metabolic-enhancing benefits as the original concentrated version.

According to

New Sun Nutrition, and thanks to its packaging's natural properties, the new RTD variant both boasts a longer shelf life and contributes to waste reduction. The company also emphasises the cans' additional green credentials, which include requiring only 5% of the energy and producing just 5% of the greenhouse gas emissions involved in the production of new cans from bauxite.

New Sun Nutrition's move follows the current trend towards environmentally friendly packaging in more mainstream products.

One of the pioneers to introduce 'green' packaging was **NatureWorks**, producer of NatureWorks PLA, a biodegradable and compostable corn derived polymer, which it uses to produce environmentally friendly plastic bottles.

The first company to adopt NatureWorks' bottle was bottled water company **BIOTA Colorado Springs**. The introduction of BIOTA spring water in 2004 coincided with the conclusion of the research on NatureWorks' PLA polymer. Since then, BIOTA has held the exclusive rights to market the revolutionary bottle in the US.

Meanwhile, just this month, Montréal-based **+1 Water**, announced it would be the first Canadian company to introduce NatureWorks PLA water bottle. These companies represent just two bottled water industry players that are dedicated to finding more environmentally responsible packaging options.

The trend towards green packaging is not exclusive to the drinks industry; recent developments, some of which are slightly 'quirky', have also expanded to the beauty industry. Colorado's **Pangea Organics**, which produces organic skincare and bodycare products, created a name for itself with its 100% post-consumer paper soapboxes with amaranth or basil seeds, so designed for planting. Meanwhile, Canada's **Cargo Cosmetics** introduced a range of lipsticks packaged in compostable lipstick tubes. Their boxes, as with Pangea, are made of biodegradable flower paper and are said to produce a small pot of wildflowers when planted.

As the demand for more natural ingredients and health-orientated products accelerates, and as consumers become increasingly aware of environmental issues, it will be interesting to see how other functional beverage manufacturers respond.

www.frsenergy.com

“the new RTD version contains only natural ingredients.... boasts a longer shelf life and contributes to waste reduction”



OFF *the* SHELF



To your health

Carpinteria-based New Sun Nutrition has reformulated its line of beverages for the health-conscious.

FRS (Free Radical Scavenging) antioxidant drinks feature a patented blend of flavonoids and

Exhibit N

Lance Armstrong joins antioxidant brigade

By Bruce Horowitz
USA TODAY

The marketing of products made with antioxidants is shifting to a higher gear: Lance Armstrong is joining the bandwagon.

Today, New Sun Nutrition, a little-known Santa Barbara, Calif., maker of beverage and wellness products, will announce that Armstrong has become its chief spokesman and a part-owner.

Armstrong, the seven-time Tour de France winner and cancer survivor, will appear in

Marketing ads and on packaging for its FRS (Free Radical Scavenger) energy drink. The vitamin-rich drink has cult-like status in some athletic circles — from bike shops to pro teams.

"No one will take a drink of this and be Superman overnight," says Armstrong, whose endorsements typically have been of giants such as Nike and Coke. "But we know people reach for beverages, and this is a lot healthier than most."

Consumers and marketers have recently become enamored with antioxidants, which are nutrients that can protect cells from damage due to oxidation. Some 1,013 products making "high antioxidant" claims — from teas to energy drinks to candy bars — were introduced in 2006, compared with 159 in 2004, Datamonitor reports.

► **Chocolate.** Hershey's put an antioxidant seal on its dark chocolates in late 2005. Over the past two years, its dark chocolate business has nearly doubled, says Michele Buck, chief marketing officer.

► **Tea.** Two years ago, Lipton didn't mention antioxidants on its tea label, now an antioxidant label is on 40 of its teas, says Mike Bauer, general manager of beverages at Unilever. And Snapple, which has an antioxidant label on 15 teas, will likely expand that across its entire tea line, says Bryan Mazur, general manager of teas at Cadbury Schweppes Americas Beverages.

More products with antioxidant claims rolled out in the first three months of 2007 than in all of 2004, notes Tom Vierhile, director of Datamonitor's Productscan Online.

Fear is driving growth. "Some consumers have this image that

Antioxidant growth

Number of new foods and beverage products in the USA claiming to be high in antioxidants:



By Alejandro Gonzalez, USA TODAY



By Elizabeth Orsatti, New Sun Nutrition

Pro spokesman: Lance Armstrong will star in New Sun Nutrition ads.

their bodies have become chemical dumping zones," says cultural anthropologist Grant McCracken.

The best source of antioxidants is fruits and veggies, says Yale nutritionist Kelly Brownell. "You don't need to pay a lot of money for some exotic-sounding juices."

But Dick Lamb, CEO of New Sun, says FRS is the real deal. Lamb, who co-founded Balance Bar before selling it to Kraft in 2000 for \$268 million, says FRS was originally developed in 2001 to help cancer patients battle fatigue from chemotherapy. "It delivers a short-term feeling of well-being and long-term health benefits," Lamb says. "That sets us apart from energy drinks."

Armstrong says he drinks it daily. For now, FRS distribution is mostly on the West Coast, where 10.5-ounce cans cost up to \$2.49. At 25 calories, one can has about the same amount of antioxidants as three servings of blueberries. FRS is also sold on the company's website at www.frs.com.

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Wayback Machine
Beta

http://frs.com/ Go

287 captures
7 Oct 97 - 18 Feb 10

JAN FEB 27 MAR
2007 2008 2009

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THE SCIENCE OF QUERCETIN ATHLETE STORIES **FRS** healthy energy PRODUCTS PURCHASE

Exhibit P

SHE KNOWS Diet & Fitness

NEW!

from SheKnows.com

Diet Spotlight
**SOUTH
BEACH**

4 Simple
Pilates Moves

Gym Spotlight
CURVES

Stripping off the weight

Romantic Dinner
Menu for Two

HOW TO: TONE YOUR
BODY & MIND WITH

YOGA

Find Your
Facial in
the Fridge

5 EASY
STEPS TO

Sexy Abs

23
EASY DIET
RECIPES



Tilapia in Color (pg. 88)



South Beach Chicken Paella (pg. 14)



Lemon Triple Berry Wheat Muffins (pg. 91)



Avocado Mango Salad (pg. 75)

Why Healthy Eating May
be Hazardous To Your Health

February/March 2006 Display Until 03/20/06
Volume 1 Issue 1



Exhibit Q

groove

WHAT'S THE BUZZ ABOUT energy drinks?

Why are they so popular all of sudden?

Since the dawn of time, humans have searched for stimulants. In prehistoric times, those stimulants came from natural sources like roots and berries. As human culture progressed, some became less acceptable, even illegal. But that didn't stop us from looking for the best way to get the energy we needed to wake up, pack more in our day, or revive after strenuous work.



Healthier energy drink alternatives

Some energy drinks provide an energy boost with more natural sweeteners and stimulants and less of a caffeine overload. Two of these include FRS Plus and Gatorade's Propel Fitness Water.

FRS Plus contains:

- **JUICE CONCENTRATES** — White grape, apple, pineapple, pear and peach
- **QUERCETIN** — A flavonoid shown to have antibacterial, anti-inflammatory, antiallergic, antimutagenic, antiviral, antineoplastic, anti-thrombotic and vasodilatory activity
- **GREEN TEA EXTRACT** — (also a flavonoid)
- **SUGAR**
- **VITAMINS E, B3, B2, B1, B12 AND BETA CAROTENE**
- **CAFFEINE** — 25mg, roughly equal to 1/3 of a cup of regular coffee
- **TAURINE**

FRS Plus is only available online of www.frsplus.com

Health Tip Of The Week

Energy In A Bottle--And More?

Susan Yara, 03.30.06, 12:30 AM ET

Who needs coffee when a new energy drink claims to be more than just a morning pick-me-up? It depends who you believe.

FRS Plus--the FRS stands for Free Radical Scavenger--is a new antioxidant beverage distributed by a company called New Sun Nutrition, based in Santa Barbara, Calif. The company claims FRS Plus improves athletic performance and recovery, fights fatigue caused by stress or disease, and improves cognitive functions without causing shakiness, anxiety or sudden dips in energy levels. New Sun President Dick Lamb, who is also co-founder of the Balance Bar Company, says the drink gets its benefits from three main sources: green tea extract, vitamins and minerals (with emphasis on vitamins B and C) and the most potent ingredient, quercetin.

Quercetin is a bioflavonoid (plant pigment) extracted from the skins of fruits and vegetables. It has been touted as a powerful antioxidant, anti-inflammatory, anti-allergen and antihistamine. "It has amazing benefits for humans," says Lamb. Several studies, including some conducted at the Mayo Clinic in Rochester, Minn., suggest that quercetin helps ward off a host of disorders, such as asthma, cancer and heart disease, because it combats the "free radical" molecules that are thought to contribute to many of these problems, but researchers caution that more studies must be done.

While that sounds great, David Robbins, M.D., a director in the division of digestive diseases in the department of medicine at New York City's Beth Israel Medical Center, cautions against using supplements for their healthful claims.

"All the data on the benefits of quercetin are coming from researchers who are funded by the companies that distribute the product," he says. "There is no data showing that it is in fact safe or whether it is really good or bad for you. The concern is that when it's metabolized in the body, it could have the opposite effect of an antioxidant and cause damage to DNA as a pro-oxidant."

Lamb says he strongly believes in the benefits of quercetin and says FRS is a breakthrough in nutrition and health that will markedly improve people's lives. "I loved the way it made me feel, personally, and loved how it helped a close friend who has ovarian cancer."

Though FRS is marketed as an antioxidant energy drink, Lamb says it shouldn't be confused with other energy drinks in the industry, since his product contains healthful benefits. Products like Red Bull's popular energy drink get their kick from ingredients such as caffeine, sugar, taurine and guarana. FRS does contain caffeine, but in a dose that is the equivalent of about a quarter-cup of coffee. The drink comes in two versions: regular and low calorie.

FRS can be used once a day or several times per day--Lamb suggests at breakfast and an hour before a workout. It can be purchased as a concentrated formula, a powdered drink mix, a ready-made drink or flavored chews.

For more information, visit www.frshealth.com

Additional comments from New Sun Nutrition and independent researchers:

Dr. Robbins statement, that "all the data on the benefits of quercetin are coming from researchers who are funded by the companies that distribute the product" is, in fact, not the case. The National Institutes of Health (NIH) is doing a Phase III trial on quercetin and obesity, and both NIH and DARPA as well as Natick Soldier Center and Tufts University have conducted and are conducting Government funded human clinical trials on quercetin and other flavonoids. A government entity is funding a double-blind, placebo-controlled trial at UC Irvine on the benefits of FRS on brain function, and initial results are positive and appear to be highly significant. Many universities have done their own research on quercetin and many other flavonoids with no corporate funding, as can be seen from the attached summary of studies published in recent years.

The fact that NIH is doing a human Phase III trial on quercetin (at long-term usage levels of quercetin at more than 1 gram per day, over three times that which is in a serving of FRS) means that they are not concerned about the toxicity of quercetin. New Sun Nutrition currently uses only GRAS (Generally Recognized as Safe by the FDA) QU985 which is quercetin at minimum purity of at least 98.5%, which in practice reaches well over 99% purity.

Dr. Robbins's statement that "There is no data showing that it is in fact safe or whether it is really good or bad for you" is refuted by the GRAS status enjoyed by New Sun Nutrition's QU985 as well as a large number of studies showing quercetin's impact as a powerful antioxidant, anti-inflammatory, anti-allergen, and it's efficacy in helping prevent a number of diseases including cancer and heart disease. It also boosts energy and is thermogenic, making it beneficial for dieters.

Review of the total body of available data on quercetin as presented in several published reviews indicates that quercetin, although displaying mutagenic activity in vitro, is not carcinogenic in the body. In a number of studies (Das et al. 1994; Stavric, 1994; Formica and Regelson, 1995; Lamson et al., 2000; Erlund, 2004) and most recently Okamoto (2005), a review of quercetin safety based on past animal toxicity studies, concluded that orally administered quercetin is unlikely to cause any adverse effects although specific dose levels were not indicated.

According to Marcus Elliott, MD: "Nearly every antioxidant we've studied can, in certain environments and concentrations, have pro-oxidant effects. Although there are a few studies demonstrating this pro-oxidant effect from quercetin, they haven't been significant to date. Our common antioxidant vitamins, particularly Vitamin E, appear to have pro-oxidant properties in a much wider range of environments and acting on more biologically important molecules. I don't have much concern about this effect for quercetin."

Exhibit R

MON

TUES

WED
05.10.06

THURS

FRI



ASK HUNGRY GIRL



Dear Hungry Girl,

Lately I've been getting very tired in the middle of the afternoon. I drink coffee sometimes but it doesn't really energize me. It often even makes me more tired. And I would rather avoid those crazy Red Bull type of energy drinks. Have any ideas for me?

So Tired

Dear Tired,



I actually have similar issues with mid-afternoon tiredness. Luckily, I recently discovered the absolute greatest beverage on the planet. It's an antioxidant energy drink called FRS Plus (the low calorie kind), and it seriously ROCKS. About a month or so ago, the FRS people called me to see if I would be interested in trying their product. I looked it up and was a little bit put off by its medicinal look and feel, weird name, and not-so-attractive packaging (sorry, FRS). Honestly, it looks a lot like some sort of scary gym beverage. But I decided to give it a try anyway, and I've been hooked ever since. FRS is basically a healthy (and delicious) drink that's packed with vitamins and antioxidants and gives you tons of energy. I drink FRS (which incidentally was developed by one of the co-founders of the Balance Bar) when I wake up (I've even ditched my fancy morning iced coffee drinks!), and also in the middle of the afternoon. The difference it has made for me personally is INSANE. I don't typically write about products like this, but I've really fallen for this one BIGTIME. And even though it's packed with vitamins and antioxidants, I'm actually way more impressed with the fact that after drinking it, I have so much more energy, am way more mentally alert, and feel GREAT! I use the concentrated kind (in low cal orange...YUM!), and add 6 -7 oz. of water, 1 packet of Splenda, and a lot of crushed ice to 2 oz. of it. It makes a refreshing, awesome, 30-calorie drink. I know I'm starting to sound like an infomercial, but I can't help the way I feel about this stuff. BTW, in an effort to make sure everyone in the free world tries FRS, the fine FRS folks are [giving away free 7-day supplies of it](#) (if you pay for shipping-- which is just a few dollars). I HIGHLY recommend you try it (I don't often steer you wrong, do I? Just remember to choose the low calorie kind). I also want to clarify that I am NOT being paid to write this, I'm not related to anyone who works for FRS, and I don't know anyone at the company personally. If you do try this stuff, email me and let me know what you think.

Exhibit S



PRESS RELEASE

Contact

Korinne Munson
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NEW SUN NUTRITION'S FRS® HEALTH DRINK EARNS "BEST NEW HEALTH INITIATIVE" AT 2007 WORLD BEVERAGE CONGRESS' BEVERAGE INNOVATIONS AWARDS

- FRS Recognized for Significant Health Benefits Including Improved Mental and Physical Performance, Better Concentration and Reduced Fatigue -

SANTA BARBARA, CA, March 8, 2007-- New Sun Nutrition, a developer and distributor of healthy beverages, was honored with the "Best New Health Initiative" award for its FRS® antioxidant health beverage at the 2007 World Beverage Congress' Beverage Innovations Awards held on March 7, 2007 in Madrid, Spain. Other finalists in the category included Celsius Inc.'s Celsius calorie-burning soda, Coca-Cola's Enviga, Soya Health Food's Sunrise Healthy Start and Tate & Lyle's Enrich beverages.

New Sun Nutrition's flagship FRS beverage product was recognized by the Beverage Innovations Awards for its health benefits including improved mental and physical performance, reduced fatigue and improved concentration. FRS is a scientifically developed, patented formula that combines nature's most powerful antioxidants and essential vitamins to provide a sustained, healthy energy boost and long-term antioxidant health protection. Studies of FRS and its key antioxidant ingredients in athletes, office workers and cancer patients have all had significant positive results, including a 3.1 percent improvement in performance during a 30 km time-trial in a study of cyclists conducted at Pepperdine University.

"We are very pleased that the judges recognized the significant health benefits of FRS, and anticipate that the marketplace will also validate the benefits that FRS offers to athletes and time-stressed consumer alike," said Richard Lamb, chief executive officer at New Sun Nutrition and healthy energy snack industry veteran who co-founded The Balance Bar Company in 1992. "New Sun Nutrition will continue to strive for excellence in its products and to promote better health and nutrition worldwide."

More than 120 entries from over 17 countries competed for Beverage Innovations Awards in ten categories. Winners were announced at the InnoBev Global Soft Drinks Congress in Madrid. The judging panel comprised UNESDA Secretary General Alain Beaumont, Heather Taylor of NSF International, Edouard Malbois of Enivrance, Sam Rowe of Weber Shandwick Public Relations, and beverage innovation magazine Editor Claire Phoenix. The panel was chaired by Zenith International Publishing Managing Editor Bill Bruce.

This Beverage Innovation Award comes on the heels of a recent announcement that FRS has become an official sponsor of the Discovery Channel Pro Cycling Team. FRS is being provided to the team in the U.S. and Europe throughout the 2007 Pro Tour season in ready-to-drink, concentrate and convenient chew formats.

Where to buy FRS

FRS ready-to-drink cans are currently available at select grocery, convenience and health food stores in West Coast markets including Santa Barbara, San Diego and Seattle. A list of retailers is available online at www.frs.com. FRS ready-to-drink formula is available in All Natural and Low Calorie versions. The all natural flavors (Orange and Lemon Lime) are sweetened with organic evaporated cane juices and contain no added preservatives, additives or coloring. The low calorie line (Wild Berry, Orange and new Peach Mango) has only 25 calories per can. FRS is also available in liquid concentrate, powder, ready-to-drink and chew forms. All forms of FRS are available online at www.frs.com.

Exhibit T

The Scientists Behind FRS

FRS is the result of years of research and development by Dr. Lan Bo Chen, Ph.D., Professor of Pathology at Harvard Medical School's Dana-Farber Cancer Institute, Dr. Mitsunori Ono, Ph.D., world-renowned phytochemical expert and Senior Scientist with the Beth Israel Deaconess Medical Center, and Thomas Lines, a pioneer in flavonoid research.

About New Sun Nutrition

New Sun Nutrition, founded in 2004, is a developer and distributor of nutritional supplements, healthy snacks and beverages that is pioneering the development of flavonoid antioxidant health solutions to improve consumer health and wellness. The company's proprietary formulas synergistically combine nature's most potent plant nutrients with other healthy ingredients to provide both immediate and long-term health benefits.

The company's current product portfolio includes FRS® antioxidant health drink, a scientifically formulated supplement designed to boost energy, enhance performance and neutralize free radicals before they can cause cellular damage. FRS contains a patented combination of flavonoids, essential vitamins and metabolic enhancers. The flavonoids are quercetin, an antioxidant typically found in the skins of apples, onions and red grapes, as well as catechins extracted from green tea.

The New Sun Nutrition management and advisory team is comprised of nutrition and beverage industry leaders, renowned Harvard scientists, doctors and specialists in the fields of sports performance, disease prevention, and drug development.

For more information on New Sun Nutrition's products, log on to www.frs.com

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PRESS RELEASE

Contact

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HEALTHYENERGY.COM GOES LIVE TO PROVIDE CONSUMERS WITH A HEALTHIER ALTERNATIVE IN ENERGY DRINKS

FRS® Product Line of Ready-to-Drink Cans, Concentrate, Powder and Chews Lead the Way in Offering a Healthy Way to Generate and Sustain Natural Energy

Santa Barbara, CA, September 24, 2007 --The FRS Company, a developer and distributor of healthy energy beverages and antioxidant-based nutrition and wellness products, today announced the launch of a new consumer e-commerce site www.healthyenergy.com. The site is designed to provide today's busy, and often tired consumers, with a handy way to research, shop for, and order FRS®'s Healthy Energy System products via the convenience of the Internet.

Healthyenergy.com is making it easier for consumers to make informed choices and includes information regarding the FRS Healthy Energy System, a new generation of great tasting, refreshing, healthier energy drinks, drink mix powder, concentrate and chews that rely on antioxidants and vitamins for all day energy and includes clear and specific labeling regarding caffeine, sugar and nutrients in each FRS package.

FRS delivers an energy lift consumers can really feel and contains 100% of the recommended daily allowance (RDA) of beneficial antioxidants such as vitamins A, C and E, along with other key energy-producing and energy-sustaining compounds like vitamins B6, B12 and niacin. Additionally, the FRS formula contains only 48 mg caffeine per ready-to-drink can which is the equivalent to half a cup of coffee and low-calorie options are also available including ready-to-drink cans with 25 calories per serving, or single serving drink powder packets with just 10 calories per serving.

What sets FRS products apart from traditional energy drinks is its patented formula of beneficial antioxidants and vitamins that deliver a smarter, smooth and sustained energy lift. FRS is an easy and tasty way to increase energy levels while getting more beneficial antioxidants and vitamins into consumers' diets. The key to unlocking natural, internal energy is through a plant-based antioxidant, Quercetin. One, eleven ounce can of FRS contains the same amount of plant based antioxidants as eating 10 servings of raspberries (5 cups) or 8 servings of red onions (4 cups), quantities that today's busy consumer may not have the time or desire to eat on a daily basis.

"HealthyEnergy.com is a great way for us to help stressed out office workers, harried moms, athletes and frequent travelers find a trusted and functional source of healthy, sustained energy," said Maigread Eichten, president and CEO of The FRS Company. "We know that once consumers try FRS, they immediately recognize the benefit and we've created a generous free trial offer to make it easy to try FRS and experience how it delivers a smooth energy lift."

The healthyenergy.com site allows consumers to join the movement towards healthy energy by signing up for a free two-week trial featuring a selection of FRS healthy energy ready-to-drink cans, concentrate, chews and drink mix powder (retail value is approximately \$53) by paying just \$3.95 for shipping and handling.

FRS was the winner of the 2007 World Beverage Congress' Best Health Initiative award and is a



corporate sponsor of the Lance Armstrong Foundation as Lance Armstrong is an avid FRS consumer and drinks FRS as part of his daily routine.

About The FRS Company

The FRS Company (formerly New Sun Nutrition, Inc.), founded in 2004, is a developer and distributor of nutritional supplements, healthy energy snacks and beverages that is pioneering the development of flavonoid antioxidant health solutions to improve consumer health and wellness.

The company's product portfolio includes FRS® healthy energy drink, a scientifically formulated supplement designed to boost energy, enhance performance and neutralize free radicals before they can cause cellular damage. FRS, which stands for the scientific term Free Radical Scavenger, contains a patented combination of flavonoid antioxidants, essential vitamins and metabolic enhancers. The flavonoids are quercetin, an antioxidant typically found in the skins of apples, onions and red grapes, as well as catechins extracted from green tea.

RS ready-to-drink cans are currently available through Amazon.com, GNC stores nationwide, and at select grocery, convenience, health food and bike stores. Consumers should visit www.healthyenergy.com for a free trial offer of FRS products, or call (877)-FRS-4YOU or visit www.frs.com to locate stores. All FRS products are available on the company's web sites for convenient home or office delivery.

6450 Via Real Carpinteria, CA 93013 T 805 684 5950 F 805 684 5960 www.frs.com

BEVERAGEWORLD

[UPCLOSE]

On a Mission

With the launch of its new marketing campaign, FRS is focused on bringing healthy energy to consumers. By Jennifer Cirillo



« MAIGREAD EICHTEN, president and CEO of The FRS Co., is pushing to get the product into the hands of consumers this year through a new marketing campaign that entails extensive sampling.

VITAL STATS

THE FRS CO.

PRESIDENT & CEO: Maigread Eichten

HEADQUARTERS: Foster City, Calif.

EMPLOYEES: 50

GOALS: To bring healthy energy to its consumers.

OK, so this isn't the first beverage company that is offering energy the healthy way, but it is different, Eichten insists. She explains FRS (Free Radical Scavenger) uses quercetin as its key ingredient. Quercetin is an

antioxidant found in the skins of apples, blueberries and cocoa, and helps extend the body's natural adrenaline by inhibiting the production of COMT, an enzyme that would turn it off. FRS works with Merck & Co., a global research-driven pharmaceutical company, to harvest the quercetin found in a plant in Brazil, Eichten notes. A can of FRS contains 325 milligrams of quercetin.

"The big issue consumers have with the current energy products is the sugar and caffeine. You crash from that. And that is what's interesting about FRS. It has a long life in your body and therefore you do not crash," says Eichten.

"Don't Crash. Drink Healthy Energy" is the slogan leading the company's marketing campaign set to launch this month and it comes with good timing, coinciding with the health and wellness trend. And who better to speak to health and wellness than Tour De France winner and cancer survivor Lance Armstrong. In addition to being the company's key product endorser, Armstrong, who got involved with the company in 2006, also sits on the Board of Directors.

The FRS formulation that was originally developed in 1997 to help cancer patients gain back their energy has taken an aggressive turn in the past year. Never intended to be distributed on the market as a ready-to-drink beverage, notes Eichten, FRS began rolling out with its first national retail accounts in GNC stores in July 2007 with the help of a \$25 million investment from a well-known investment firm.

Some may argue that one of the key factors to launching a successful beverage is timing. Others may insist that without the finances, a beverage, no matter how good the flavor, won't reach its respective audience. Yet, there are those that believe in that old saying, "if you build it, they will come."

"I don't know about you, but it's 10 a.m. in California and I'm already tired!" says Maigread Eichten, president and CEO of The FRS Co. (formally known as New Sun Nutrition), makers of FRS healthy energy drink. The point that Eichten is trying to make is that anyone could use a little pick-me-up—the pulsating energy drink market is proof of that. But what she is referring to isn't the sugar-filled, powerfully caffeinated energy that is out there—she's talking about healthy energy.

[UPCLOSE]

« TOUR DE FRANCE winner and cancer survivor Lance Armstrong is FRS' key product endorser. He appears on new advertisements with the slogan, "Don't Crash. Drink Healthy Energy."

But it was FRS' e-commerce site, healthyenergy.com, which launched in 2004, that helped the beverage establish its cult-like following of professional and amateur athletes as well as health-savvy consumers.

Eichten reports that in 2008 the company expects to receive five to 10 million visitors to the site and ship out about 200,000 samples.

To keep the momentum going, the company plans to make an impact with FRS by sampling and scheduling in-store appearances to educate consumers on the benefits of quercetin. In addition to quercetin, FRS healthy energy drink also contains vitamins B6, C and E as well as catechins from green tea



leaves to support overall health and weight management, which speaks to a broad consumer base, notes Eichten.

FRS comes in orange and lemon lime flavors in addition to three low-calorie flavors—wild berry, peach mango and orange—that have 25 calories and 7 grams of carbs. The drink is offered in RTD cans, drink concentrate, soft chews and a powdered drink mix and all varieties will be shipped to consumers requesting a sample.

"We are excited now to really get it out there," says Eichten, adding that the company redesigned the cans to include the words "healthy energy." "I really believe that by communicating healthy energy on the can that will be very helpful to consumers because it communicates the core idea of the brand." If you build it, they will come... **BW**

FRS[®]

healthy energy

101 Lincoln Centre Drive
Suite 500
Foster City, CA 94404
(650) 227-2209
www.frs.com








"healthy energy" 



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FRS is a **Healthy Energy** Drink that is full of Antioxidants that can reduce Free Radicals and ... Try the Lance Armstrong **Healthy Energy** Drink FRS Free Trial.
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Functional beverage

From Wikipedia, the free encyclopedia

A **functional beverage** can be defined as a drink product that is non-alcoholic, ready to drink and includes in its formulation non-traditional ingredients. This includes herbs, vitamins, minerals, amino acids or additional raw fruit or vegetable ingredients, so as to provide specific health benefits that go beyond general nutrition. Sports and performance drinks, energy drinks, ready to drink (RTD) teas, enhanced fruit drinks, soy beverages and enhanced water, among others, are some of the product segments rolled out as functional beverages in the market space.^[1]

Functional beverages have become popular due to its appeal to consumers who are seeking specific health benefits in their foods and beverages with their 'healthiness-on-the-go' idea. Both convenience and health have been identified as important factors when consumers make decisions about purchasing foods and beverages. Functional drinks are promoted with benefits such as heart health, improved immunity and digestion, joint health, satiety, and energy-boosting.^[2]

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Industry

Functional beverage sector is a subsector of the functional food and non-alcoholic beverage industry and it is the fastest growing sector. This rapid growth is partially due to the combination of maturity of the carbonated soft drink sector and heavy investments by major food and beverage companies.^[3] In 2006, the functional beverage per capita consumption have risen to 66.4 gallons, while the carbonated soft drink sector has a decline in their per capita consumption to 50.4 gallons (192.5 gallons was the average per capita consumption in 2006).^[4] Another reason for the growth is the consumer-oriented market scheme in which innovative ideas come from consumers. In US, the market share of functional beverages accounted for 48.9% of the \$118.3 billion-worth non-alcoholic industry in 2008.^[5] Industry entrance is mainly driven by the higher growth annual rate of 15% to 20%.^[6] This added value is significantly larger than the 2-4% per annum growth rates of general foods and beverages market.^[6]

Industry players in functional beverage industry are generally categorized into four types.^[7] One, is the traditional

non-alcoholic beverage companies including PepsiCo Inc., Fuze Beverage and Coca-Cola Co. Another type consists of major food companies such as Nestlé, Altria Group, Kraft Foods Inc., General Mills Inc., Campbell Soup Co.^[7] The third group is smaller scaled private companies, like the NOVA Group, Austria and some of which specialize in one subcategory or segment of the functional beverage market like Traditional Medicinals and POM Wonderful.^[7] The last group are growers' cooperatives such as Ocean Spray and Sunsweet Growers.^[7]

Current product trends

Products of functional beverage industry encompass wide range of varieties targeting different health related concerns.^[3] One trend is hybrid drinks with functional and sensory benefits such as thirst quenching ability with daily dosage of vitamins or other nutrients.^[5] Another one is probiotics, exemplified by Activia yogurt, for gut health and boosting natural defenses or immune system. Memory and mental sharpness is also coming into focus with Function BRAINIAC, a carambola punch Energy Drink in the Function Drinks line. Children's functional drinks also receive much attention in recent years with leading brand Neslie's Boost (beverage). The current trend of single serve is fueled by consumer's preference in convenience. According to Campbell's director of single-serve beverages, "People know they will be seen when they are drinking single-serving beverages, so the package is critical."^[8] Weight loss, health and beauty drinks account considerable market share, such as Nova the Essential Drink. Lastly, energy-boosting functional beverage products, such as Red Bull and 5-Hour Energy, are rated number one in growth in the functional beverage market.

Market

In this economic downturn, many products belonging the specialty food category are expected to have reduced sales because paying more for those specialty items are not an option for many consumers.^[7] These consumers also tend to shop in discount grocery stores and tend to make fewer grocery trips. Despite this, the functional beverage market is predicted to have an increase in growth. This is because people generally reduce restaurant expenses first before they start cutting down grocery expenses.^[7] It has also been determined that people have become more proactive in illness prevention and control.^[7] In the past, people were very reactive in their health because health problems are treated after they arrive. Nowadays, people will take an initiative and look for a food product that will supposedly prevent an illness from occurring.^[7] Thus, all of the above features may insulate the functional beverage market from experiencing lower sales.

Competition in the functional beverage industry is primarily done in four different ways. Companies firstly focus on their own products by clearly distinguishing their health claims from similar products and specify naturally healthy ingredients.^[7] Then, extensions of existing brand lines need to be considered.^[7] The addition of Kids Essentials to the Boost (beverage) line by Nestle is a good representation of this strategy. Thirdly, bigger companies compete for market share by acquiring smaller companies that may own a particular market sector.^[7] An example is Coca Cola purchasing Glaceau from Energy Brands and Odwalla and Fuze Beverage from their respective founders. Lastly, to increase the competitiveness of the company, one may explore new functional brands by identifying new markets and demands.

Market segments of the functional beverage industry are divided mainly by four parts.^[3] Those include hydration, energy/rejuvenation, health and wellness and weight management.^[3] Each segment has its own target market and consumers. Overlapping of target consumers does occur, not because of undefined market needs, but due to the consumer acceptance towards functional beverages.^[7]

Hydration

Currently there is an increasing amount of advertising in the promotion of hydration. In 2008, Nestle launched the sale of

Glowelle, exclusively in Neiman Marcus. Antioxidant vitamins and fruit extracts are among the ingredient list that the company claims to "hydrate the inner and outer layer of the skin" and protect drinkers from free radicals.^[9]

Gatorade's Thirst Quencher offers a wide assortment of flavours each containing an "excellent source" (25% DV) of B vitamins (B₃, B₅, B₆) to help meet the demands of energy metabolism; an "excellent source" (20% DV) of the antioxidant vitamin E to help protect the active body; an "excellent source" (20% DV) of vitamin C to help active people as they attack their day.^[10] In tandem with these adjustments, low-calorie G2 was also reformulated. Now it delivers significant nutrition enhancements by providing an "excellent source" (25% DV) of B vitamins (B₃, B₅, B₆) and a "good source" (10% DV) of vitamins C and E, all of which help meet the nutrient needs of active individuals.^[10] Gatorade is well-known for its hydrating qualities for athletes.^[citation needed]

Another example of a functional beverage targeting the hydration sector is HydroOne Premium Beverage from Augusta, Georgia.^[11] It contains vitamins and minerals as well as herbal extracts that are specifically and scientifically formulated to promote healthy hydration, maintain healthy levels of blood glucose, and also provides the nutrients that are beneficial for the circulatory system.^[12] Hydro One Premium Beverages delivers a form of sugar which is the most advantageous for the body and aids in the nutritional needs of people while hydrating them in a healthy way.^[12] The company recommends two to four bottles daily.

Energy/Rejuvenation

There is an increase in the presence of energy beverages by Red Bull, Adrenaline Rush, 180 and many others. These highly-caffeinated, high-energy drinks have exploded on the beverage market in the United States, as well as globally and generated a whole new generation of copycat caloric or – in many cases – sweetened beverages.^[13]

According to the different brands of energy drinks, ingredients that serve as stimulants include: taurine, glucoronolactone, caffeine, and B vitamins, guarana, ginseng, ginkgo biloba, L-carnitine, sugars, antioxidants, yerba mate, creatine, milk thistle.^[14] Although these ingredients have been approved by the FDA, health experts still recommend consumers to read the label to make wiser choice of beverage since these ingredients may not be beneficial to one's health.^[14]

Health and wellness

Functional beverage companies are more aware of the 'health conscious' individuals and have introduced functional beverages with less sugar and therefore less calories. For example, Vitaminwater 10 contains only 10 calories per serving (25 calories for a 351mL bottle, 7.5 grams of sugar and 250% of daily allowance of Vitamin C).^[10] On the other hand, it has the same 25% of the daily allowance of Vitamins B₃, B₅, B₆ & B₁₂ as the original.^[10] Vitaminwater 10 has an all natural sweetener extracted from the stevia plant, which is a benefit in lowering calorie content (although taste is another matter) as well as fitting the product in the "natural" category.^[10]

Weight management

With increased worries about obesity and its implications on health, combined with demand for convenience goods, consumers are naturally looking towards easy weight loss methods that they can easily integrate into their lifestyles.^[15] As such, functional beverages are striving to achieve that through addition of ingredients that promote weight loss.^[15]

Coca Cola and Nestlé have partnered to produce Enviga, one of the new 'calorie-burning beverages.'^[16] Skinny Water (owned by Skinny Nutritional Corp.) and Nutrisoda's Slenderized (owned by PepsiCo) have both used included a polyphenol called epigallocatechin gallate (EGCG) in their ingredient for their "metabolize boosting effect". With the increase in demand, ingredient manufacturer are now offering a 95% EGCG content product, a tea extract called "Blue California."^[17] Some

investigators report about slimming actions induced by chlorogenic acids from green coffee, further investigations need to be performed.

The dollar sales share on each of these sub-segments are: 28% (Hydration), 8.4% (Energy/Rejuvenation), 62.2% (Health and Wellness), 1.2%(Weight Management).^[4]

Consumer demographic

The consumer group is characterized as well educated, females, ages 35–55 belonging to upper middle, middle, and lower middle classes.^[13] This is due to their perceptions towards positive health beliefs, as well as a relatively high disposable income.^[13] Within the energy and stimulant drink sector, young adults aged 18 to 34 are considered to be the main target market, evidenced by high consumption rates.^[18] However, there could be potential downsides when companies rely too heavily on trends due to constant attitudinal differences of functional beverages across categories.^[19]

Health concerns

Health experts are concerned about the ready consumption of the rising functional beverage. As much as these beverages essentially still serve to hydrate the individual, they may not lessen or even address major health issues today such as obesity, heart disease, and cancer that are associated with the consumption of sweetened beverages, of which, most of these beverages are.^[20] This is because most of these drinks contain significant amounts of sugars and hence calories, which would add to discretionary and total caloric intake. As such, these ingredients pose health risks because of what they contain (sugar and caffeine) or what they replace in the diet (vitamin and mineral-rich foods).

Another set of concerns is that some functional beverages contain ingredients that have not been sufficiently studied for health benefits, safety, and dosage or have higher levels of a certain ingredient, like caffeine, a large amount of which is associated with heart disease and cancer.^[20] Thus, consumption of these beverages might lead to undesired outcomes due to unforeseen interactions.

Sugar content

A 20 oz bottle of Glacéau's Vitaminwater has been reported to contain approximately 33g of sugar, which is similar to the sugar content of a can of coke.^[21] As such, such products may not be as healthy an alternative as other commonly consumed beverages. In addition, the sugar content of such beverages promote dental caries amongst frequent consumers.

Energy drinks

In some particular functional drinks, particularly energy drinks, the caffeine content can be high, ranging from 0 to 141.1 milligrams per serving, of which an average 8-ounce cup of coffee contains about 133 mg of caffeine. There have been reports to Health Canada of adverse reactions involving energy drinks.^[22]

See also

- Functional food

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External links

- Functional drinks - specialist news, analysis, reports and consultancy on the global functional beverages market, including enhanced, herbal, new age, wellness, nutraceutical, energy, sports, dairy and juice drinks (<http://www.functionaldrinksnews.com/Home.aspx>)

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CERTIFICATE OF SERVICE

I, Abigail Smith, hereby certify that on August 1, 2011, I served copies of the Petition to Cancel on the following parties by way of U.S. mail:

Mr. Jonathan A. Hyman
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/Abigail Smith/

Signature

August 1, 2011

Date