

John B. Sganga, Jr. (SBN 116,211)
john.sganga@kmob.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Phone: (949) 760-0404
Facsimile: (949) 760-9502

Brian C. Horne (SBN 205,621)
brian.horne@kmob.com
Laura M. Blau (SBN 265,106)
laura.blau@kmob.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
10100 Santa Monica Boulevard
Suite 1600
Los Angeles, CA 90067
Phone (310) 551-3450
Facsimile: (310) 551-3458

Attorneys for Plaintiff,
THE FRS COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE FRS COMPANY, a California)	Civil Action No. 3:12-cv-02420-RS
corporation,)	
Plaintiff,)	[PROPOSED] FINAL CONSENT
v.)	JUDGMENT AND PERMANENT
)	INJUNCTION AS MODIFIED BY THE
)	COURT
REVIVE FRANCHISING, LLC, a limited)	
liability company; RYLO PRODUCTS,)	
LLC, a limited liability company; SITO)	
MARKETING, LLC, a limited liability)	
company, d/b/a Revive Energy Mints;)	
CHRISTOPHER ROBERTSON, an)	
individual; MICHAEL KELTY, an)	
individual; and WILLIAM WOTOCHEK,)	
an individual)	
Defendants.)	
)	Honorable Richard Seeborg

1 Plaintiff THE FRS COMPANY ("Plaintiff") filed the Complaint in this action
2 charging REVIVE FRANCHISING, LLC; RYLO PRODUCTS, LLC; SITO MARKETING,
3 LLC d/b/a Revive Energy Mints; CHRISTOPHER ROBERTSON; and MICHAEL KELTY;
4 (collectively referred to as "Defendants") with federal trademark infringement in violation of
5 section 32(1) of the Lanham Act, 15 U.S.C. § 1114; false designation of origin and unfair
6 competition in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125; trademark
7 infringement under the common law of the state of California; and unfair competition under
8 California statutory law. The parties have agreed to a settlement of the matters at issue
9 before them and to the entry of this Consent Judgment and Permanent Injunction, by which it
10 is hereby ORDERED, ADJUDGED and DECREED that:

11 1. This Court has jurisdiction over the parties and over the causes of action
12 asserted in this action. Venue is proper in this judicial district.

13 2. Defendants do not contest Plaintiff's claims that Plaintiff has continuously
14 and extensively used the mark HEALTHY ENERGY in interstate commerce in connection
15 with its goods since at least as early as January 2007, and has obtained extensive common
16 law trademark rights in such mark (hereinafter the "Plaintiff's HEALTHY ENERGY
17 Mark").

18 3. Defendants do not contest Plaintiff's claims that, based on this widespread
19 use, Plaintiff has established substantial goodwill in Plaintiff's HEALTHY ENERGY Mark,
20 and Plaintiff's HEALTHY ENERGY Mark has acquired and continues to have secondary
21 meaning.

22 4. Defendants do not contest Plaintiff's claims that Plaintiff has valid and
23 enforceable rights in Plaintiff's HEALTHY ENERGY Mark.

24 5. Defendants do not contest that Plaintiff's U.S. Trademark Registration No.
25 3,544,234 for its mark HEALTHY ENERGY is valid and enforceable.

26 6. Defendants have sold nutritional products using the name or mark HEALTHY
27 ENERGY MINTS.

1 7. Effective as of August 30, 2012, the following who receive actual notice of
2 this Judgment and Permanent Injunction by personal service or otherwise are hereby
3 enjoined: Defendants, its officers, agents, servants, employees, franchisees, distributors, and
4 attorneys, and all other persons in active concert or participation with them. This injunction
5 prohibits the following acts at any and all present and future locations owned, operated,
6 affiliated, or controlled by Defendants, its officers, agents, servants, employees, franchisees,
7 distributors, and attorneys, and all other persons in active concert or participation with them:

8 a. Using, copying, simulating, or in any other way infringing Plaintiff's
9 HEALTHY ENERGY Mark or any confusingly similar variations thereof, including but
10 not limited to, "HEALTHY ENERGY" or "HEALTHY ENERGY MINTS," or any other
11 confusingly similar marks which include variations of the words "healthy" and "energy"
12 next to each other, alone or in combination with other words or letters, regardless of any
13 unique capitalization, in connection with any food products, candy, mints, beverages,
14 supplements, nutritional products, diet products or services, health-related products or
15 services, or exercise-related products or services, or from using, copying, simulating, or
16 in any other way infringing Plaintiff's HEALTHY ENERGY Mark (hereinafter
17 collectively referred to as the "Prohibited Marks");

18 b. Using the Prohibited Marks in connection with any food products, candy,
19 mints, beverages, supplements, nutritional products, diet products or services, health-
20 related products or services, or exercise-related products or services, in any manner
21 whatsoever, including, but not limited to, the following: on any packaging, boxes,
22 vending machines, websites, franchise materials, purchase orders, flyers, company
23 brochures, business cards, advertising, or any other business identifiers, such as building
24 signs, directional signs, monument signs, computer templates, banners, and advertising
25 media, or as part or all of any business or corporate name; and
26
27
28

c. Passing off, or actively and knowingly assisting any third party in passing off, its products as being affiliated or associated with, or endorsed or sponsored by, Plaintiff.

8. Plaintiff's claims arising with respect to Defendants are dismissed *with prejudice*.

9. Each party will bear its own costs and attorneys' fees.

10. This Court retains jurisdiction over this matter for the purpose of making any further orders necessary or proper for the construction of this Judgment, the enforcement thereof, and the punishment of any violations thereof.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 2, 2012 By: /s/Brian C. Horne

John B. Sganga, Jr.

Brian C. Horne

Laura M. Blau

Attorneys for Plaintiff,
The FRS Company

OPPEDAHL PATENT LAW FIRM, LLC

Dated: August 2, 2012 By: /s/Margaret Polson (with permission)

Margaret Polson, Esq.

Attorneys for Defendants,
REVIVE FRANCHISING, LLC; RYLO
PRODUCTS, LLC; SITO MARKETING, LLC d/b/a
Revive Energy Mints; CHRISTOPHER
ROBERTSON; and MICHAEL KELTY

IT IS SO ORDERED.

Dated: 8/3/12



Honorable Richard Seeborg
UNITED STATES DISTRICT COURT JUDGE

13651909_2