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DALLAS COUNTY, TEXAS

162nd JUDICIAL DISTRICT

CAUSE NO. 12-1662

IN RE: MARY KAY INC.,  
A Delaware corporation,

Petitioner.

(Lowrie Falcone)

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IN THE DISTRICT COURT OF

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**PETITIONER MARY KAY INC.'S FIRST SUPPLEMENTAL VERIFIED PETITION  
TO TAKE A DEPOSITION OF LOWRIE FALCONE**

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Pursuant to Texas Rule of Civil Procedure 202, Petitioner, Mary Kay Inc. ("Mary Kay"), files this First Supplemental Petition to Take a Deposition of Lowrie Falcone ("Petition") and hereby requests authority to depose Lowrie Falcone ("Ms. Falcone"). Mary Kay seeks to depose Ms. Falcone to investigate potential claims in anticipation of filing suit against Ms. Falcone and others for tortious interference with contractual and business relationships, breach of contract, unfair competition, and/or trademark infringement.

**PARTIES**

1. Mary Kay is a Delaware corporation, licensed to do business in the State of Texas. Mary Kay maintains its principal place of business at 16251 Dallas Parkway, Addison, Texas 75001.

2. Mary Kay seeks to depose Lowrie Falcone, an individual believed to be located at 7369 East Prairie Rd, Lincolnwood, Illinois 60712. Ms. Falcone's telephone number is (847) 677-0542.

## FACTS

3. Mary Kay is a manufacturer and wholesale distributor of cosmetics, toiletries, skin care, and related products. The worldwide success of Mary Kay is undeniable; the Company's products are now sold in over thirty-five (35) markets around the world. Founded in 1963, Mary Kay has become one of the largest direct sellers of skin care products and color cosmetics in the United States.

4. Mary Kay's international success can be attributed to the carefully designed business model it created for the marketing, sale, and distribution of its products. Through this business model, Mary Kay produces the highest quality products and sells them directly to its Independent Beauty Consultants ("IBC"), who then sell the products to their customers, the ultimate consumers. An individual becomes an IBC when she/he submits an IBC Agreement, which is accepted by Mary Kay at its Dallas, Texas Headquarters, and then purchases a demonstration kit containing product samples and general information for use in her/his business.

5. The IBC Agreement also places obligations on the IBC designed to protect the stature of Mary Kay's trademarks. The terms of the IBC Agreement prohibit IBCs from using the Mary Kay name or trademark in any advertising, specifically prohibiting the use of the Mary Kay name and trademark in internet advertising or sales without Mary Kay's prior written approval. Mary Kay expressly retains the exclusive right to use and advertise the Mary Kay name and trademark at its discretion and in a manner consistent with the Mary Kay business model.

6. Mary Kay seeks to depose Ms. Falcone to investigate potential claims by Mary Kay against Ms. Falcone and others for breach of contract, unfair competition, tortious

interference with contractual and business relationships, and/or Texas common law trademark violations.

7. Mary Kay believes Ms. Falcone has been facilitating the sale of Mary Kay cosmetics on eBay, Inc. ("eBay") under the username "lff4158" in violation of Texas law. EBay is an on-line auction and retail front for individual sellers. Mary Kay suspects Ms. Falcone of purchasing Mary Kay Products from IBC's who are contractually prohibited from selling Mary Kay Products for resale on eBay. Mary Kay did not authorize the sale of any of its products, or the use of its trademarks or trade dress, on eBay. Further, Mary Kay did not authorize any person to sell any of its products to Ms. Falcone for the purpose of reselling such products on eBay.

8. The subject matter of Ms. Falcone's deposition will be her involvement in the sale of Mary Kay cosmetics on eBay and/or the identity of the individuals who have been selling Mary Kay products to, and buying products from Ms. Falcone, in anticipation of claims against Ms. Falcone and others for breach of contract, tortious interference with contractual and business relationships, unfair competition and Texas common law trademark violations.

9. The IBC Agreement provides that, the parties "agree that if any dispute or controversy arises between them concerning any matter relating to this Agreement that any issues which either party may elect to submit for legal jurisdiction shall be submitted to the jurisdiction of the courts of the State of Texas and the parties agree that the proper venue shall be Dallas, Dallas County, Texas." This Petition is filed in Dallas County, Texas, where Petitioner anticipates the institution of a suit in which Petitioner may be a party.

## REQUEST TO DEPOSE

10. Petitioner asks the Court to issue an order authorizing it to examine Ms. Falcone by oral and videotaped deposition. Petitioner expects to elicit testimony from Ms. Falcone regarding her involvement in the sale of Mary Kay products on eBay, and in particular, the manner in which Ms. Falcone acquired the Mary Kay products which were sold on eBay.

11. Petitioner further requests that Ms. Falcone be ordered to preserve and produce for inspection and copying the following documents and items:

- a. All computer disks or drives, or information stored on any computer, server, or electronic storage device, containing information that refers or relates to the sale of Mary Kay products on eBay, including the identity of any individual who provided Ms. Falcone Mary Kay products which were subsequently sold on eBay, or any individual to whom Ms. Falcone provided Mary Kay products which were subsequently sold on eBay;
- b. All hard copy documents that refer or relate to the sale of Mary Kay products on eBay, including the identity of any individual who provided Ms. Falcone Mary Kay products which were subsequently sold on eBay, or any individual to whom Ms. Falcone provided Mary Kay products which were subsequently sold on eBay;
- c. All hard copy or electronic documents that came from, once belonged to, or were copied from any individual and/or company who sold Ms. Falcone Mary Kay products which were subsequently sold on eBay; and
- d. All hard copy or electronic documents that were sent to or were copied to any individual and/or company who sold Ms. Falcone Mary Kay products which were subsequently sold on eBay.

12. Mary Kay seeks to obtain such testimony to investigate potential claims against Ms. Falcone and others for breach of contract, tortious interference with contractual and business relationships, unfair competition and/or Texas common law trademark violations. The benefit of allowing the deposition outweighs the burden or expense of the procedure because it allows Mary Kay to investigate potential claims before utilizing judicial resources and immediately filing a lawsuit or for injunctive relief.

13. WHEREFORE, Petitioner requests that the Court set a date for hearing on this Petition and, after the hearing, issue an order authorizing (1) Petitioner to take the oral and videotaped deposition of Ms. Falcone, and (2) the production of documents and media listed above.

Dated: February 21, 2012

Respectfully submitted,



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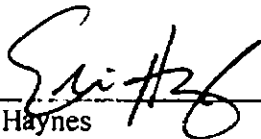
**ATTORNEYS FOR PETITIONER**

VERIFICATION

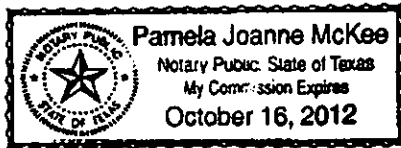
STATE OF TEXAS  
  
COUNTY OF DALLAS


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BEFORE ME, the undersigned Notary Public, on this day personally appeared Eric Haynes and, after being duly sworn, stated under oath that he is the Senior Counsel for Mary Kay Inc.; that he has read the above Petition; and that the statements contained in the Petition are within his personal knowledge and are true and correct.

  
Eric Haynes

SUBSCRIBED AND SWORN TO BEFORE me on February 13, 2012, to certify which witness my hand and official seal.



  
Notary Public, State of Texas

My commission expires: Oct. 16, 2012

KELLY  HART

FILED

PRESTON R. MUNDT  
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February 21, 2012

12 FEB 21 2012  
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GARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
DEPUTY

***Via Hand Delivery***

Gary Fitzsimmons, District Clerk  
Dallas County District Clerk  
600 Commerce Street, Suite 103  
Dallas, Texas 75202

Re: In Re Mary Kay Inc., A Delaware Corporation

Dear Clerk:

I have enclosed the original and three copies of the following for filing:

1. Petitioner Mary Kay Inc.'s First Supplemental Verified Petition to Take a Deposition of Lowrie Falcone; and
2. Petitioner Mary Kay Inc.'s First Supplemental Verified Petition to Take a Deposition of Jose Santo.

Please file the originals and return the file-stamped copies to me. If you have any questions, please do not hesitate to contact me.

Sincerely,



Preston R. Mundt

PRM:pm  
Enclosures  
1324141