

NO. DC-06-11432

ROBIN BLACKMON-DUNDA;

Plaintiff,

vs.

MARY KAY INC., a Texas corporation

Defendant.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

160th JUDICIAL DISTRICT

PLAINTIFF'S AMENDED PETITION:

COUNT I---BREACH OF CONTRACTS;

COUNT II---INTENTIONAL INTERFERENCE WITH CONTRACTS;

COUNT III---INTERFERENCE WITH PROSPECTIVE CONTRACTS;

COUNT IV--DECEPTIVE TRADE PRACTICES;

COUNT V---INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;

COUNT VI--DEFAMATION

COMES NOW the Plaintiff, by and through her attorneys undersigned and for her Verified Original Petition against the Defendant, alleges as follows:

1. This case arises under Texas law inasmuch as the Defendant has caused events to occur in Dallas County, Texas out of which this action arises.
2. The Plaintiff ROBIN BLACKMON-DUNDA has been a resident of Texas at all material times.
3. The Defendant, MARY KAY INC. (hereinafter "Defendant" or "the company" or "Mary Kay") is a Texas corporation headquartered in Dallas, Texas selling cosmetics through a huge organization of multi-level contractually related consultants operating as independent contractors who are compensated on the basis of a percentage of wholesale purchases made by the

1 consultants and retail purchases of customers under them in each consultant's own business, also
2 referred to as her "Sales Unit."

3 4. Plaintiff Robin Blackmon-Dunda entered into contracts as an Independent Beauty Consultant
4 and Sales Director with the Defendant, copies of which are attached hereto as Exhibits 1 (form
5 currently used by Mary Kay in lieu of copy of Plaintiff's 1987 contract, which she is unable to
6 locate) and 2 respectively.

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8 5. Until her termination by Defendant, Plaintiff Robin Blackmon-Dunda was a Sales Director
9 with Mary Kay of long, and illustrious, standing having begun her Mary Kay business in July,
10 1987 and debuting as a Sales Director in 1994, achieving Top Ten in sales for her (Sapphire)
11 Seminar three times, Million-Dollar Sales Director twice, and Top Ten Sales Director
12 Nationwide twice. She was Queen of Unit Sales for the Sapphire Seminar in 2005, and 1st
13 runner-up in 2006, finishing 5th for the entire nation. Her Mother, Jo Ann Blackmon has been
14 with Mary Kay for 37 star-studded years of her own. They are the first mother-daughter Million-
15 Dollar Sales Directors in Mary Kay history.

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18 6. Plaintiff Robin Blackmon-Dunda had 683 Independent Beauty Consultants and the 5th ranked
19 unit sales out of 14,000 units nationwide in Mary Kay, which includes 715,000 consultants. Her
20 sales topped the \$1.1 million amount the past two years and were over \$900,000 in 2004.

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22 7. Despite all of her stellar accomplishments, including the building and training of her large
23 team of consultants, according to a letter to her from Defendant's in-house counsel dated August
24 10, 2006, a true and correct copy of which is attached as Exhibit 3 hereto, Mary Kay decided to
25 take Plaintiff Robin Blackmon-Dunda's "business" and her "career" away from her and not
26 compensate her for the sales volume her Unit will continue to generate for Mary Kay into
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1 perpetuity, simply by giving her thirty (30) days notice of its intent to do so. This attempted
2 forfeiture of Plaintiff Robin Blackmon-Dunda's rights would appear to include her right, already
3 earned, for her to travel, along with her husband, Stryker Dunda, on the 2006 Top Sales Director
4 Trip at the Prestige Level, as was previously confirmed to her by letter from Mary Kay dated July
5 14, 2006.

6 8. Mary Kay has failed and refused to withdraw its unilateral decision to terminate Plaintiff
7 Robin Blackmon-Dunda's business and career, without compensation for the residual income
8 stream she built over a period of years, since 1987, which Defendant has purported to forfeit
9 from her in what it claims is its right to do on 30 days notice.

10 9. Plaintiff Robin Blackmon-Dunda is an independent contractor business owner, also described
11 in the Sales Director Agreement as an "independent dealer," with all of the property rights that
12 implies. Those rights would include the right to sell or transfer her property, as is the well settled
13 law in Texas as it relates to unreasonable restraints on alienation.

14 10. By its conduct, Defendant has failed to give Plaintiff Robin Blackmon-Dunda an opportunity
15 to sell her right to a residual income stream from the sales of the Unit she has spent years
16 building and training has worked a forfeiture of the \$220,000.00 or more annual income
17 generated from her business, including Commissions, Prizes and Awards, not only for her life
18 expectancy but for the reasonable "life expectancy" of the Unit she has created and maintained.

19 11. Mary Kay, in misappropriating Plaintiff Robin Blackmon-Dunda's business will, with
20 reasonable probability, generate tens of millions of dollars of sales and profits from the sales
21 made by her Unit now and into the future. Defendant's one page letter, a copy of which is
22 attached as Exhibit 3 hereto is an attempt to wipe out Plaintiff Robin Blackmon-Dunda's rights

1 to her residual income stream for her life expectancy and that of her heirs, which she and they
2 deserve to be paid as a result of developing her business over these many years.

3 12. Mary Kay's contracts with Plaintiff Robin Blackmon-Dunda do not purport to state that her
4 residual income stream will be forfeited should Mary Kay decide to "pull the plug" on her
5 business. Any such "forfeiture clause" would be illegal and unconscionable on its face.

6 13. In its 2006 Fact Sheet, a true and correct copy of which is attached as Exhibit 4, Mary Kay
7 holds itself out to its consultants and to the public as enabling its consultants to start their own
8 "independent business" for \$100.00. and encourages consultants to think of themselves as
9 "Entrepreneur" owners of their own "independent business" who are their own "boss" and setting
10 their "own schedule" through its two page promotion entitled "The Mary Kay Business
11 Opportunity (March, 2006)," a true and correct copy of which is attached hereto as Exhibit 5, and
12 indeed, held itself out to the Federal Trade Commission ("FTC") of the United States
13 government, in a letter from its Senior Vice President & General Counsel dated July 17, 2006, a
14 true and correct copy of which is attached hereto as Exhibit 6, as an upstanding multi-level
15 marketing business which provides legitimate business ownership to its consultants and sales
16 directors, when in fact, it makes a concerted effort to prevent those independent business owners
17 from realizing the benefit of their business ownership should they wish to sell their businesses or
18 leave them to their families, through a testamentary disposition by will or trust. Mary Kay
19 should not be holding itself out to the FTC as a representative of the interests of its independent
20 business owners, who are entitled to compensation for the residual income streams they have
21 built, a fact and legal requirement which Mary Kay has chosen to ignore. Mary Kay also
22 represents to the public, the income tax collecting arm of the State of Texas, the FTC, and the
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1 Internal Revenue Service, as well as to the Courts of this State, on the one hand that its
2 consultants and sales directors are not employees, but on the other hand failing to recognize its
3 independent business owners are entitled to all of the rights of business ownership, including the
4 right to reasonable compensation for their residual income streams upon termination of their
5 businesses, or to give them such time as would be reasonably required to make a transfer of their
6 business for fair value.

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8 14. In letters dated December 29, 2004 and January 27, 2005, true and correct copies of which
9 are attached hereto as Exhibits 7 and 8 respectively, in-house counsel for Mary Kay called
10 Plaintiff Robin Blackmon-Dunda to account for 1) promoting cruise/travel vouchers on her
11 internet website (Exhibit 7) even though she was not holding conference calls during that period
12 of time and never had conducted first and third week of the month meetings as alleged in that
13 letter, and by the time that letter was written Plaintiff Robin Blackmon-Dunda had not used the
14 reference travel vouchers, having stopped doing so six months before the date of the said letter,
15 Exhibit 7, when a representative of Defendant had requested her to stop, and 2) for “sale,
16 promotion and/or distribution” of a training DVD and CD she had allegedly created, to other
17 Mary Kay consultants, when in fact she had not created the subject DVD and CD, which had
18 been created by a National Sales Director, Karen Ford, and when she had, well prior to the date
19 of Exhibit 8, stopped receiving money for the DVD/CD and was giving it away for free, when it
20 was requested. On April 8, 2005 Plaintiff Robin Blackmon-Dunda was asked to meet with five
21 executives of Mary Kay at its headquarters in Dallas and advised to attend the meeting alone,
22 without even being allowed to bring her husband, Stryker Dunda to the meeting. At the meeting
23 she was threatened with termination by the five representatives of the Defendant and shown a
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1 letter of termination (which was not actually given to her) dated for her termination effective
2 April 8, 2005, and told she was being put on indefinite probation and not allowed to teach at
3 Seminar 2005 held in July, 2005, or speak there as the top Director in the company, based upon
4 Exhibits 7 and 8, in combination with a letter sent to her by in-house counsel in 2001 alleging a
5 violation of paragraph 8.7 of her contract with the company to the effect that she had placed an
6 order in another person's name without her consent, another letter from in-house counsel dated
7 November 25, 1995 where she had been accused of endorsing the business of a family friend, and
8 an email from her to her Directors discussing the prospects of getting their cooperation in
9 creating their own training DVD, which was never actually created, true and correct copies of
10 which are attached as Exhibits 9 and 10.
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13 15. Subsequently, in a letter, a true and correct copy of which is attached as Exhibit 11, dated
14 May 26, 2005 to Mary Kay's Vice President of Sales, Gary Jinks, to which Mr. Jinks did not
15 respond, Plaintiff Robin Blackmon-Dunda graciously and respectfully accepted "the probationary
16 terms" but asked the company to "reconsider one part of [her] punishment, the Day Three
17 minute talk" at Seminar 2005 in July in order to "thank and acknowledge [her] Mom and Dad,
18 [her] husband, [her] children, and [her] unit," on an occasion she would rightfully serve as the
19 company recognized "Queen" because of her great accomplishments upon behalf of Mary Kay,
20 but at which she had been forbidden to speak as a part of the "punishment" doled out by the five
21 company executives in attendance at the April 8, 2005 meeting described above. When the
22 Seminar took place and Plaintiff Robin Blackmon-Dunda was indeed not allowed to give the
23 traditional Queen's speech, consultants in her business unit were, in the words one set forth in a
24 letter to company officials, a true and correct copy of which is attached hereto as Exhibit 12,
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1 “saddened,” “deflated,” “humiliated,” “dazed,” “confused” and “in tears.” Plaintiff Robin
2 Blackmon-Dunda also experienced all of the emotions and feelings referenced in Exhibit 12 as a
3 result of being deprived by Mary Kay of the right to make the short speech thanking those who
4 had helped her succeed, a speech which all consultants in attendance understood was her right
5 according to the company’s custom and practice.

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7 16. In yet another letter from in-house counsel dated August 14, 2006, a true and correct copy of
8 which is attached hereto as Exhibit 13, received several days after the date of the 30 day
9 termination letter, Exhibit 3, Plaintiff Robin Blackmon-Dunda, was again chastised by the same
10 company lawyer who had sent Exhibit 3 a few days before, alleging violation by said Plaintiff of
11 Sections 8.6 and 8.10 of her Independent Sales Director Agreement by virtue of being “involved
12 with the sale, promotion, and/or distribution of a hostess apron as well as an instructional DVD
13 [she] created,” and that she had “promoted the lending services” offered by a third party, even
14 though she had not mentioned her affiliation with Mary Kay. Defendant sought to stop the sale
15 the hostess aprons even though its executives had expressed approval of the hostess apron on
16 several occasions but had no desire to give credit to Plaintiff or allow Plaintiff to take any credit
17 for the idea. Plaintiff Robin Blackmon-Dunda’s husband, Stryker Dunda is not bound by the
18 provisions of the Independent Sales Director Agreement signed by his wife, and he was the
19 person who had marketed the hostess apron, selling thousands of them through his website,
20 www.success4me.net . In its multiple letters to Plaintiff Robin Blackmon-Dunda accusing her
21 of, among other accusations, endorsing a family friend and other businesses, and selling training
22 tools and other associated products or services to other Mary Kay consultants, Defendant has
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1 wrongfully and unfairly selected Plaintiff Robin Blackmon-Dunda, one of its most devoted, loyal
2 and successful Directors ever, for unwanted, harassing and discriminatory treatment, while
3 ignoring a multiplicity of similar activities by some National Sales Directors and other Sales
4 Directors of Mary Kay.

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6 **COUNT I**

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8 **BREACH OF CONTRACTS**

9 17. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set
10 forth herein.

11 18. Plaintiff Robin Blackmon-Dunda entered into valid contracts with the Defendant to own her
12 own business as a Consultant and Director of the Defendant, attached hereto as Exhibits 1 (form
13 currently used by Mary Kay in lieu of copy of Plaintiff's 1987 contract, which she is unable to
14 locate) and 2, respectively.

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16 19. Plaintiff performed her obligations under the contracts with the Defendants by building her
17 business over a period of many years, developing her Sales Unit to become one of Mary Kay's
18 largest, and generating millions of dollars in sales of Mary Kay products.

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20 20. The actions of the Defendant in failing to pay Plaintiff Robin Blackmon-Dunda the value of
21 the business upon terminating her as a consultant is a breach of the contracts which are the
22 subject hereof, attached hereto as Exhibits 1 (form currently used by Mary Kay in lieu of copy of
23 Plaintiff's 1987 contract, which she is unable to locate) and 2 respectively inasmuch as they
24 provide that said Plaintiff was to have her own independent business as a Consultant for and
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1 Sales Director of the Defendant, and since there was no provision for the company to take her
2 business away from said Plaintiff without compensating her for the value of same.

3 21. The provision of the Sales Director contract attached hereto as Exhibit 2 with respect to
4 “Section 13. Assignability” to the extent it unconditionally prohibits transferring of Plaintiff
5 Robin Blackmon-Dunda’s business is an unreasonable restraint on alienation, as are the
6 provisions of “Section 10. Termination” to the extent they provide for the Defendant to be able to
7 forfeit the business of a Sales Director upon her termination or death without compensation or
8 being afforded the right to sell or transfer her business. and are therefore illegal and invalid, and
9 thus Plaintiff Robin Blackmon-Dunda should have been given an opportunity to sell or transfer
10 her business, not to have it be forfeited by the Defendant, and Defendant’s failure to allow for
11 said Plaintiff’s voluntary sale or transfer of said business is an additional breach of the
12 Independent Beauty Consultant and Sales Director contracts, Exhibits 1 (form currently used by
13 Mary Kay in lieu of copy of Plaintiff’s 1987 contract, which she is unable to locate) and 2
14 respectively.
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18 22. The provisions of the Sales Director contract, Exhibit 2 attached hereto, under Sections 8.6
19 and 8.10 dealing with Director’s Responsibilities, which purports to keep Plaintiff Robin
20 Blackmon-Dunda from competing with Mary Kay, from endorsing or from selling non-Mary Kay
21 products to other Mary Kay Consultants during the term of the Sales Director Agreement and for
22 a period of two years from her termination is against public policy and therefore void and
23 unenforceable. Defendant’s attempts to enforce same against Plaintiff Robin Blackmon-Dunda
24 and to punish her for endorsing or selling non-Mary Kay products and/or services constitute
25 breaches of her Independent Beauty Consultant Agreement and Sales Director Agreement which
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1 are replete with references to her status as the owner of her own business and as an independent
2 contractor. Defendant's attempt to keep Blackmon-Dunda from selling her own or other
3 Director's training DVDs and punishing her for same, as well as its attempt to interfere with her
4 relationship with her husband in the context of her husband, Stryker Dunda's business of selling
5 hostess aprons similarly constitute breaches of the multiple covenants guaranteeing her status as
6 an independent business owner contained in the said Independent Beauty Consultant Agreement,
7 at sections A4, A7, B5, and the last paragraph thereof, and Sales Director Agreement in the
8 second "Whereas" clause thereof which confirms her status as an "independent dealer" together
9 with Section 11, "RELATIONSHIP—INDEPENDENT CONTRACTOR," by Defendant Mary
10 Kay.
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12 23. Plaintiff has been damaged by the Defendant's breaches within the jurisdictional limits of
13 this Court.
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15 24. By reason of the conduct of the Defendant breaching its contract with Plaintiff Robin
16 Blackmon-Dunda as set forth above, including enforcing or attempting to enforce illegal and/or
17 invalid provisions of the contracts with her, and then failing to pay her reasonable compensation
18 upon demand made by her attorney for same, Plaintiff has been forced to retain legal counsel to
19 prosecute this action and is entitled to her reasonable attorneys' fees in prosecuting this action
20 against the Defendant pursuant to Texas Civil Practice and Remedies Code §38.001.
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23 WHEREFORE Plaintiff prays for Judgment as follows:
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- 25 1. Damages sufficient to compensate the Plaintiff for loss of the value of her business;
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2. Declaring the provisions of Sections 8.10, 10 and Section 13 of the Sales Director Agreement to be void and unenforceable;
 3. Reasonable attorneys' fees;
 4. Costs, and such other and further relief as the Court deems just.

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COUNT II

INTENTIONAL INTERFERENCE WITH CONTRACTS

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25. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set forth herein.

26. Plaintiff Robin Blackmon-Dunda had express contracts with and was the third party beneficiary to those Independent Beauty Consultants she personally recruited and with those Independent Beauty Consultant in her Sales Unit for whom she served as the Independent Sales Director, to be their trainer, leader, and, as required by the terms of her Sales Director Agreement, Exhibit 2, their 'Business Consultant,' "and particularly to offer aid, counsel and inspiration to all independent Beauty Consultants" within her Sales Unit who were to be "counseled by" her.

27. By terminating Plaintiff Robin Blackmon-Dunda without compensating her for the value of her residual income stream from her business, namely the Sales Unit which she had painstakingly built during her many years owning and building her own business as an Independent Beauty Consultant and Sales Director, and/or by not allowing her to sell or transfer said proprietary

1 business owned by her, Mary Kay has willfully and intentionally interfered with Plaintiff's
2 contractual relationships with the existing members of her Sales Unit.

3 28. The willful and intentional interference with Plaintiff Blackmon-Dunda's contractual
4 relationships with the Independent Beauty Consultants in her Sales Unit has caused her to sustain
5 damages in an amount which are within the jurisdictional limits of this Court.

6 29. Plaintiff is entitled to punitive damages in a just and reasonable amount as the actions of the
7 Defendant in forfeiting Plaintiff Robin Blackmon-Dunda's business as a Sales Director with
8 Mary Kay, thereby halting the residual income stream she was entitled to as a result of building
9 her own business by recruiting, training, providing business consultation to, and in general,
10 supporting and serving the Independent Beauty Consultants who were members of her Sales
11 Unit, were done with actual malice as a result of Defendant's ill-will, spite, and evil motive
12 toward, and purposeful infliction of injury upon Plaintiff Robin Blackmon-Dunda, all as shown
13 by the repeated, harassing conduct of the Defendant against the said Plaintiff, and by the cavalier
14 way in which it terminated one of the company's most successful, loyal and productive Sales
15 Directors on 30 days notice, without compensating her for the forfeiture of her business, or
16 making it possible for her to sell or transfer it in order to recoup the value of it to her.

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20 WHEREFORE Plaintiff prays for Judgment as follows:

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22 1. Compensatory damages sufficient to compensate the Plaintiff for financial losses incurred
23 as a result of Defendant's interference;
24 2. Punitive damages in a just and reasonable amount;
25 3. Costs, and such other and further relief as the Court deems just.
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COUNT III

INTERFERENCE WITH PROSPECTIVE CONTRACTS

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30. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set forth herein.

31. Plaintiff Robin Blackmon-Dunda built a large organization of Independent Beauty Consultants in her Sales Unit who also recruited and were at the time of said Plaintiff's termination, recruiting additional Independent Beauty Consultants into her Sales Unit, and would continue to do so for many years into the future, or for as long as Mary Kay operates.

32. There exists a reasonable probability that Plaintiff Robin Blackmon-Dunda would have enjoyed a contractual and/or third party beneficiary relationship, as described in the foregoing paragraphs, with those additional Independent Beauty Consultants.

33. But for Defendant's interference, Plaintiff would have been recruited those additional Independent Beauty Consultants into her Sales Unit.

34. Through a series of actions taken by Defendant which can best be summarized as unlawful deceptive trade practices, intentional infliction of emotional distress, and defamation, the detailed descriptions of which are set forth in Counts IV, V and VI below, which allegations of independent tortious and unlawful acts are incorporated herein by this reference, the Defendant has prevented such future relationships from occurring.

35. The Defendant undertook such actions with a conscious desire to prevent the relationships from occurring, or in the alternative, it knew that the interference was substantially certain to occur as a result of its conduct.

1 36. The Plaintiff has suffered damages in an amount which are within the jurisdictional limits of
2 this Court.

3 37. Plaintiff is entitled to punitive damages in a just and reasonable amount as the actions of the
4 Defendant in forfeiting Plaintiff Robin Blackmon-Dunda's business as a Sales Director with
5 Mary Kay, thereby halting the residual income stream she was entitled to as a result of building
6 her own business by recruiting, training, providing business consultation to, supporting and
7 serving the Independent Beauty Consultants who were members of her Sales Unit, and in
8 interfering with the sales of the hostess apron, were done with actual malice as a result of
9 Defendant's ill-will, spite, and evil motive toward, and purposeful infliction of injury upon
10 Plaintiff.
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12 WHEREFORE Plaintiff prays for Judgment as follows:

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- 14 1. Compensatory damages sufficient to compensate the Plaintiff for financial losses
15 incurred as a result of Defendant's interference;
 - 16 2. Punitive damages in a just and reasonable amount;
 - 17 3. Costs, and such other and further relief as the Court deems just.
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20 **COUNT IV**

21 **DECEPTIVE TRADE PRACTICES**

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23 38. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set
24 forth herein.
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1 39. As complained herein, Mary Kay has engaged in false, misleading, and deceptive acts and
2 practices, which are unlawful under the provisions of §17.46 of the Texas Business and
3 Commerce Code, in the conduct of its multilevel marketing business.

4 40. In addition to being an independent contractor, entrepreneur and the owner of her own
5 business as a result of her contracts with Mary Kay, Plaintiff Robin Blackmon-Dunda was, for 17
6 years, a consumer of the Defendant's products as that term is defined under §17.45 of the Texas
7 Business and Commerce Code, having purchased thousands of dollars of goods from Mary Kay
8 since 1987. Throughout her relationship with Mary Kay, until the very end, she was deceived by
9 the company's continuous, non-stop, orchestrated campaign through speeches at the annual
10 Seminars, business opportunities meetings, CDs, DVDs, cassette/VCR tapes, brochures, letters
11 and emails, to sell her and to sell the other Consultants in her Sales Unit, Mary Kay products
12 which were designed to be consumable and purchased by all of them on a monthly basis, upon
13 the representation that by purchasing Mary Kay products they were building their "business" with
14 sales volume and new Consultants, who were also told to purchase Mary Kay products in order
15 to build their businesses. In 2000 Plaintiff was in the office of Tom Whatley, then president of
16 Mary Kay. Sales Directors Jill Savage Floyd and Heather Placencio were also present. Their
17 purpose in meeting with Mr. Whatley was to express their concerns about the lack of skin care
18 classes being booked and held by beauty consultants. He told them at the meeting that the
19 company was well aware of what was happening in the field. He went on to inform them that the
20 company had statistics as to the approximate number of classes being held by the average
21 consultant on a monthly basis. He stated to them at that meeting that the company's research
22 indicated that the average consultant held one-half of a skin care class a month. This confirmed
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1 what the three Mary Kay Sales Directors in attendance at the meeting already knew about the
2 lack of informational meetings. At that point Plaintiff asked Mr. Whatley to put the power of the
3 company behind the Sales Directors of the company and help them book appointments. Plaintiff
4 stated to those in attendance, including Mary Kay's President, "Instead of just trying to sell *stuff*
5 to us, why don't you help us sell?!" His reply to me was "that is not our job, that is your job!"

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7 41. Mary Kay, among other deceptive practices, has repeatedly represented to Plaintiff Robin
8 Blackmon-Dunda and its other Beauty Consultants and Sales Directors that status as Independent
9 Beauty Consultant and Sales Director affords them the complete ownership of their "own
10 business" which is a deliberate falsehood inasmuch as the Defendant's executives are all well
11 aware of the fact that Mary Kay strictly forbids its Consultants and Sales Directors to sell,
12 transfer or will their "businesses," and enjoys the fruits of the labors of its Consultants and Sales
13 Directors by forfeiture of their right to receive the "income stream" or value of it when they die,
14 leave or are terminated by Mary Kay. These trade practices of Mary Kay were misleading,
15 deceptive, and false in that Mary Kay terminated Plaintiff without compensating her for her
16 "business," and would not allow her to sell or will her "business."

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19 42. The intentional false, misleading and deceptive acts which are complained of in this Petition
20 have been committed knowingly, and intentionally, giving rise to damages for mental anguish as
21 well as economic damages suffered by the Plaintiff herein, as well as up to treble the amount of
22 those damages under the provisions of §17.50 of the Texas Business and Commerce Code.

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24 43. Plaintiff Robin Blackmon-Dunda is entitled to be restored to her former position as Sales
25 Director under the provisions of §17.50(b)(3) together with all rights and privileges of complete
26 and full ownership of her own business.
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1 44. Defendant should be enjoined by this Court under §17.50(b)(2) from engaging in any false,
2 deceptive, and/or misleading acts as are outlawed by Deceptive Trade Practices and Consumer
3 Protection statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of
4 its business.

5 45. Plaintiff is entitled to an award of reasonable and necessary attorneys' fees and court costs
6 pursuant to the provisions of §17.50(d).
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8 WHEREFORE Plaintiff prays for Judgment as follows:

- 9 1. An order enjoining Defendant Mary Kay from engaging in any false, deceptive, and/or
10 misleading acts as are outlawed by Deceptive Trade Practices and Consumer Protection
11 statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of its
12 business;
- 13 2. Compensatory damages sufficient to compensate the Plaintiff for economic losses
14 incurred as a result of Defendant's Deceptive Trade Practices;
- 15 3. Treble damages in a just and reasonable amount;
- 16 4. Reasonable and necessary attorneys' fees;
- 17 5. Restoration of her full rights and status as a Sales Director for Mary Kay along with her
18 rights to receive the income stream generated to her from her business, including any
19 back unpaid commissions there from, also known as her Sales Unit, to which she has a
20 property interest as a result of her Independent Beauty Consultant and Sales Director
21 Agreements;
- 22 6. Costs, and such other and further relief as the Court deems just.
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COUNT V

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

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3 46. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set
4 forth herein.

5 47. The conduct of the Defendant alleged herein was either calculated to cause severe emotional
6 distress to Plaintiff Robin Blackmon-Dunda, or Defendant acted recklessly in doing so.

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8 Defendant's executives were well aware of the extensive blogging activities of and concerning
9 Mary Kay on the website, "Mary Kay Sucks," now known as "Pink Truth", and on other
10 websites, knew that the termination of Plaintiff Robin Blackmon-Dunda would become known
11 to that blogging community, consisting primarily of openly disgruntled women who either are or
12 were associated with Mary Kay, as soon as the ink was dry on the termination letter signature and
13 knew or had reason to know that the termination of said Plaintiff would be "spun" on that blog in
14 such a way that both the Plaintiff and her husband, Stryker Dunda, would be repeatedly and
15 mercilessly trashed and disgraced, to the ultimate dismay of Plaintiff Robin Blackmon-Dunda.

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18 48. The conduct of the Defendant in conducting the groundless, harassing, and extremely
19 humiliating witch hunts, inquisitions, and cruel punishments against Plaintiff Robin Blackmon-
20 Dunda, ending with the cavalier, torturous public termination and forfeiture of the business she
21 had spent nearly two decades building, complained of herein, all of which Defendant knew
22 would subject said Plaintiff to public embarrassment, emotional pain, and permanent damage to
23 her reputation as a first rate Mary Kay Consultant and Sales Director, constitutes extreme and
24 outrageous conduct by the Defendant Mary Kay.
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1 49. The actions of the Defendant Mary Kay have caused Plaintiff Robin Blackmon-Dunda
2 severe emotional distress giving rise to damages in an amount which are within the jurisdictional
3 limits of this Court.

4 50. Plaintiff is entitled to punitive damages in a just and reasonable amount as the actions of the
5 Defendant were done with actual malice as a result of Defendant's ill-will, spite, and evil motive
6 toward, and purposeful infliction of injury upon Plaintiff.
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8 WHEREFORE Plaintiff prays for Judgment as follows:

- 9 1. Compensatory damages sufficient to compensate the Plaintiff Robin Blackmon-Dunda for
10 emotional distress suffered as a result of Defendant's intentional infliction of emotional
11 distress;
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13 2. Punitive damages in a just and reasonable amount;
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15 3. Costs, and such other and further relief as the Court deems just.
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17 **COUNT VI**

18 **DEFAMATION**

19 51. The Plaintiff realleges each and every allegation set forth hereinabove as though fully set
20 forth herein.

21 52. Mary Kay, through its principal executive officers have consistently communicated to the
22 field of Beauty Consultants and Sales Directors contemporaneously with and subsequent to
23 previous terminations of Sales Directors for Mary Kay that those terminations were undertaken
24 as a result of what Mary Kay concluded were unethical behavior or financial irregularities which
25 would be viewed by law enforcement authorities as criminal behavior. A meeting was held at the
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1 7 Salsa Restaurant – Coppell, TX, August 22, 2006 attended by Darrell Overcash, Heather Hines,
2 Jana Cox, and Plaintiff's parents Ron and Jo Ann Blackmon. At this meeting Darrell Overcash
3 told Plaintiff's parents and the others at the meeting there was more to the termination of Plaintiff
4 than her parents knew. He told them at that meeting that there were other things that they did not
5 know about and that "they would be shocked to find out what the real truth was pertaining to
6 Robin." Darrel Overcash stated at that meeting, "There are other things that you are not aware
7 of. Everything that you say is what you believe that is all that happened. I know as parents
8 especially – even when it plays out there's still a chance that you are not going to believe it."
9 At the meeting Jo Ann Blackmon stated, "Don't I as her National Sales Director get a copy of
10 everything in her file?" Darrell Overcash replied, "The agreement is between the company and
11 her so there are other discussions that we have of her that we do not share with the National Sales
12 Directors, Senior Directors or Directors." Those in attendance at the meeting were therefore left
13 with the impression from Mr. Overcash's statements at that meeting that there was something so
14 horrible that Plaintiff had done to warrant such drastic action as her termination after 17 years as
15 a Mary Kay Beauty Consultant and Sales Director, yet he refused to discuss the details of what it
16 was he was referring to in his meeting with them, but inferring that the details revealed
17 something horrible about Plaintiff's conduct. When they pressed him for what Plaintiff did that
18 was so terribly wrong to warrant such harsh action he indicated that there might be a chance that
19 they could possibly sit down and discuss the situation and the facts with him and Nathan Moore,
20 the company's Vice President, at a later time; however he called Plaintiff's parents shortly
21 thereafter and said that that was not possible.
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1 In August, 2006 shortly after my termination NSD LaQuita McCollum called Jill Wedding and
2 asked why I was terminated. She was told “Robin knows what she did.” When in fact I was
3 given no reason for the forfeiture of my business. Jill’s intention was to make me look bad and
4 to put questions in the minds of my friends and supporters who were going to bat for me at the
5 company.

6 53. A few days after the termination, National Sales Director (NSD) Pam Higgs called and spoke
7 with Heather Hines of Mary Kay and asked her directly “What did Robin do?” She was told “Oh
8 she knows what she did!” At about that same time, Elite Executive Sr. Sales Director Julie Neal
9 asked Heather Hines what Plaintiff did to be terminated and she was told “It wasn’t the apron...”
10 indicating that it was *something else*. In that same time period, shortly after the termination,
11 NSD Wanda Dalby and NSD Jeannie Rowland met in person with Darrell Overcash. Wanda
12 stated “Robin does not know why she was terminated.” His response was “yeah, that is the
13 problem, she doesn’t get it!”

14 54. On or around August 29, 2006, a few weeks after the termination letter was sent to Robin
15 Blackmon-Dunda, the president of Defendant Mary Kay, Darrell Overcash circulated a letter
16 addressed to the National Sales Directors of the company, who are in contact with the rest of the
17 Mary Kay field of Beauty Consultants and Sales Directors, in which he attempted to “spin” the
18 termination of Plaintiff Robin Blackmon-Dunda as having resulted from “repeated unsuccessful
19 attempts” to help her “understand she was doing something wrong.” This letter, a true and
20 correct copy of which is attached hereto as Exhibit 14, was preceded and followed by comments
21 to individual Mary Kay Sales Directors implying that when the truth came out about the
22 wrongdoing of Plaintiff Robin Blackmon-Dunda, they would better understand why the company
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1 had to terminate her, clearly implying that she had done something of a criminal nature justifying
2 her termination, just as the previous Sales Directors had done something of a criminal nature
3 justifying their termination.

4 55. Defendant Mary Kay's Overcash's letter, Exhibit 14 hereto, stating that it was a fact that
5 Plaintiff Robin Blackmon-Dunda had been engaged in wrongdoing in her business relationship
6 with Defendant, and implying she was guilty of criminal wrongdoing, was published to the field
7 of National Sales Directors, and through them, to the entire field of Beauty Consultants and Sales
8 Directors, constituting all of the Mary Kay friends and business associates of the Plaintiff Robin
9 Blackmon-Dunda.

10 56. The statements complained of hereinabove were false and defamatory.

11 57. Defendant Mary Kay acted knowingly, recklessly, or negligently in publishing the false and
12 defamatory statements.

13 58. Plaintiff Robin Blackmon-Dunda suffered damages as a result of Defendant's conduct in an
14 amount which are within the jurisdictional limits of this Court.

15 59. Plaintiff Robin Blackmon-Dunda is entitled to punitive damages in a just and reasonable
16 amount as the statements of the Defendant were done with actual malice as a result of
17 Defendant's ill-will, spite, and evil motive toward, and purposeful infliction of injury upon
18 Plaintiff.
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WHEREFORE Plaintiff prays for Judgment as follows:

1. Compensatory damages sufficient to compensate the Plaintiff Robin Blackmon-Dunda for emotional distress suffered as a result of Defendant's defamation;
2. Punitive damages in a just and reasonable amount;
3. Costs, and such other and further relief as the Court deems just.

Respectfully submitted this 31st day of August, 2007.

BREWER, ANTHONY & MIDDLEBROOK, P. C.
5201 N. O'Connor Boulevard
Fifth Floor
Irving, Texas 75039-3768
(972) 870-9898
(972) 870-9053 FAX,
dbrewer@bamlawyers.net

and

LAW OFFICES OF DAVID G. EISENSTEIN, P.C.

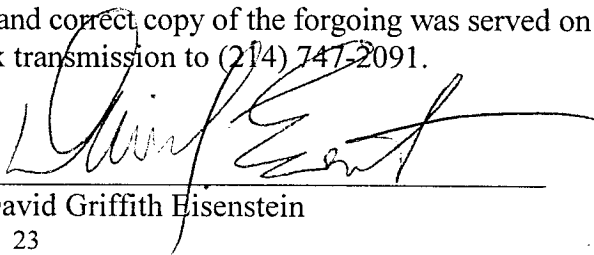
By: 

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San Diego, California 92127
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(858) 674-0870 FAX,
Eisenlegal@aol.com
pro hac vice

Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I certify that on August 31st, 2007, a true and correct copy of the forgoing was served on Beth Jaynes, Esq., Fish and Richardson, P.C., by fax transmission to (214) 747-2091.


David Griffith Eisenstein

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EXHIBIT 1 .

Independent Beauty Consultant Agreement

General Terms and Conditions

A. THE INDEPENDENT BEAUTY CONSULTANT AGREES:

1. To promote and sell Mary Kay® products to ultimate consumers and not to sell or display those products in retail sales or service establishments.
2. To provide each consumer with the written Mary Kay Satisfaction Guarantee and to promptly honor it upon request. I understand that Mary Kay Inc. ("Company") sponsors a complete satisfaction or money-back guarantee as to each Mary Kay® product sold by me to a consumer.
3. To maintain the highest standards of integrity, honesty and responsibility in dealings with the Company, consumers and other Beauty Consultants. To present Mary Kay® products in a truthful and sincere manner and hold the Company harmless from damages resulting from misrepresentations by me.
4. To protect the Mary Kay® trademarks and trade name by obtaining the Company's written permission prior to my use in any advertising (including but not limited to the Internet) or literature other than Company-published material. I understand that display or sale of Mary Kay® products in public, retail or service establishments of any kind is inconsistent with the terms of this Agreement.
5. As an independent contractor, to assume sole liability for all self-employment (Social Security), income taxes, and other reports required by my activities as an Independent Beauty Consultant and to abide by all federal, state and local laws governing my Mary Kay business.
6. To purchase the Starter Kit and all Mary Kay® products only from Company. All orders submitted to Company shall be accompanied by cash, credit card charge, cashier's or certified check, or money order made payable to the order of "Mary Kay Inc." for the full amount due. I understand that all orders are subject to acceptance by Company and the terms of this Agreement.
7. I am not a joint venturer with, or franchisee, partner, agent or employee of Company. I have no power or authority to incur any debt, obligation or liability on behalf of Company. I understand that all Independent Beauty Consultants, Independent Sales Directors and Independent National Sales Directors are independent contractors and are subject to this provision.
8. When presenting Mary Kay business opportunities, to do so in a truthful and sincere manner and ensure that any prospective Beauty Consultant recruited by me is the age of 18 years or older and receives education and materials related to a Mary Kay business upon submission of an Independent Beauty Consultant Agreement.
9. Company may release my name and telephone number in response to a customer's request for a Beauty Consultant in my area. If this information is not to be released, I agree to notify Company that I do not want this information released by written notice directed to: Consultant Records Department, P.O. Box 799040, Dallas, TX 75379-9040.
10. To comply with any changes to the General Terms and Conditions of the Independent Beauty Consultant Agreement that may be made by the Company.

B. MARY KAY INC. ("COMPANY") AGREES:

1. To allow a discount from suggested retail prices on Section 1 items of the then current Consultant order form ("Section 1 products"). The discount shall not apply to samplers, premiums, demonstrators, literature, hostess gifts or sales promotion items.
2. To pay Beauty Consultant with one or more active team members a monthly personal team commission on all purchases of Company products (excluding Starter Kits and sales aids) made by persons whom Beauty Consultant has personally recruited to become Mary Kay Beauty Consultants and who have been accepted by the Company, with commissions to be calculated and paid in accordance with the then current Company-published monthly personal team commission schedule for so long as both Beauty Consultant and team member are active, provided that commissions and bonuses paid on merchandise not sold at retail to ultimate consumers which is subsequently returned for Company repurchase pursuant to this Agreement, may be charged back or deducted from commissions or other sums payable by Company to Beauty Consultant. A Consultant must be active and have one or more active team members in order to receive a monthly personal team commission. An Independent Beauty Consultant is considered "active" in the month a minimum \$200 wholesale Section 1 product order is received by Company and in the following two calendar months.
3. Company may change suggested retail prices, discounts, commissions, transportation charges, contest rules and active status requirements at any time. Company will give Beauty Consultant at

least ten (10) days' prior written notice of: a) any changes to contest rules and active status requirements; b) increases in suggested retail prices and transportation charges; and c) decreases in standard discount and commission schedules. Written notice may be given by posting notice on the Company Web site(s).

4. No geographical territories or limits concerning sales or recruiting within the United States, Puerto Rico, the U.S. Virgin Islands and Guam are imposed on Beauty Consultant.
5. Company reserves no right of control or direction of Beauty Consultant's activities, other than the right to question results.
6. To accept Consultant's cancellation of this Agreement within thirty (30) days after acceptance of the Agreement by Company, and upon return of Consultant's original and unused Starter Kit to Company, to refund to Consultant the Consultant's cost of the Starter Kit; or if Agreement is terminated and Consultant's original and unused Starter Kit is returned to Company after the cancellation period and within one (1) year of purchase, to repurchase such Starter Kit at ninety percent (90%) of Consultant's original net cost.
7. To repurchase, upon termination of this Agreement, at ninety percent (90%) of Consultant's original net cost, original and unused Section 1 products, provided such items were purchased by Consultant from Company within one (1) year prior to return.
8. Starter Kit and Section 1 products must be shipped freight prepaid, accompanied by a "Request for Repurchase" form to the Mary Kay Repurchase Department in Dallas. Consultant agrees that Company's cost of any prizes or product bonuses awarded to Consultant because of the original purchase and any indebtedness Consultant owes Company will be deducted from the repurchase amount. Consultants who return merchandise to Company are not eligible to rejoin Mary Kay as a Mary Kay Beauty Consultant. Consultant agrees that Section 2 items are not intended to be purchased from Company for resale and are not subject to the repurchase provisions.
9. Customer names and addresses furnished by Beauty Consultant to Company in connection with optional programs shall remain the sole property of Beauty Consultant and will not be used by Company or disclosed by Company to other parties without Beauty Consultant's permission, except as may be required by law.
10. There will be no direct sales from Company to the Beauty Consultant's customer without a commission being paid to customer's Beauty Consultant, provided Beauty Consultant is a member of the Mary Kay independent sales organization at the time of the sale. Company will not accept an order directly from customer without the name and Beauty Consultant number of customer's Beauty Consultant. Commissions will be charged back on customer returns.

This Agreement is subject to acceptance by Company at its corporate headquarters in Dallas, Texas, through issuance of a Notice of Acceptance. Such acceptance is conditioned upon receipt of a Starter Kit by Beauty Consultant. This Agreement shall be governed by the laws of the State of Texas as to all matters. The parties further 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 Agreement is not subject to alteration, modification or change, except in writing, signed by an authorized executive of the Company and shall not be deemed to be changed, modified or altered by reason of any advice, suggestions, guides or sales aids furnished by the Company to the Beauty Consultant. This Agreement shall be effective from the date of acceptance until December 31 of the same year and shall thereafter be automatically renewed each January 1, for additional terms of one year each, provided that the Agreement may be terminated by either party-effective immediately for any breach of its provisions or by either party at any time during the initial term or any renewal term by not less than thirty (30) days written notice.

It is not necessary to submit a new Agreement (or purchase a new Starter Kit) if reinstating within one year of last order month (anniversary month, if no last order) as the terms and conditions of the then current Independent Beauty Consultant Agreement will continue in full force and effect. For record purposes, a Consultant must have a minimum \$200 wholesale Section 1 product order to update her last order date.

This is the sole and only Agreement between the parties relating to the subject matter hereof, and both parties acknowledge that the Independent Beauty Consultant is not an employee of Company and will not be treated as an employee with respect to this Agreement for federal, state or local tax purposes, or otherwise.

EXHIBIT 2

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SALES DIRECTOR AGREEMENT

THIS AGREEMENT, dated 1 JUL 1 1994, by and between MARY KAY COSMETICS INC., (hereinafter called "Company"), a Delaware corporation with its principal offices at 8787 N. Stemmons Freeway, Dallas, Texas 75247, and the independent contractor (hereinafter called "Director"), whose name and address appear below:

**029710/H163
ROBIN BLACKMON-DUNDA
2403 L DON DODSON #2001
BEDFORD TX 76022**

WITNESSETH:

WHEREAS, Company manufactures and sells cosmetics, toiletries and related products (hereinafter called "Mary Kay" cosmetics") under the registered trademark "MARY KAY" and various other trademarks owned by Company; and

WHEREAS, Director is engaged in business as an independent dealer ("Beauty Consultant") for Mary Kay cosmetics, purchasing such products from Company and re-selling for Director's own account to ultimate consumers of Director's choice and proposes to continue such business; and

WHEREAS, Company, recognizing the increased sales potential and other benefits accruing from development of a strong, highly motivated, national selling force of independent retail dealers, has established a special incentive program (hereinafter called "Sales Director Program") for those Beauty Consultants who particularly distinguish themselves as successful retail sellers and who demonstrate outstanding ability to motivate others to become successful retail sellers of Mary Kay cosmetics; and

WHEREAS, the Sales Director Program offers to participants (i) the opportunity to earn increased special incentive compensation in the form of commissions based upon retail sales developed by a retail selling group of independent Beauty Consultants counseled by the participating Sales Director, (ii) the opportunity to participate in Yellow Pages advertising and other programs utilizing Company-owned trademarks as authorized by Company from time to time, (iii) other rights, privileges and benefits more fully described in this Agreement; and

WHEREAS, Director has received valuable specialized instruction, education and information covering cosmetic arts, leadership, business management, motivation, recruiting information and selling techniques through personal participation in educational programs, classes, business meetings and Seminars conducted by Company in Dallas, Texas; and

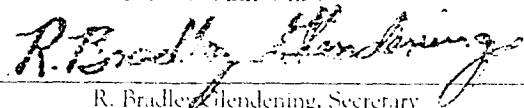
WHEREAS, Director desires to participate in the Sales Director Program and is willing to act as a "Business Consultant" to and share the benefits of Director's sales and motivational knowledge and experience with other independent Beauty Consultants and particularly to offer aid, counsel and inspiration to all independent Beauty Consultants within a particular retail selling group (hereinafter called "Sales Unit") counseled by Director; and

WHEREAS, Director has demonstrated a very high degree of personal sales ability as a retail seller of Mary Kay cosmetics and outstanding ability to motivate others to become successful retail sellers of Mary Kay products and has qualified for participation in the Sales Director Program and for designation by Company as a "Unit Sales Director";

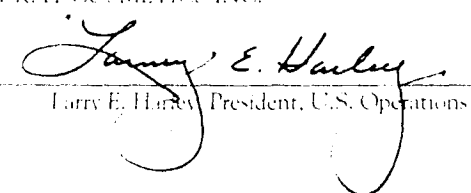
NOW, THEREFORE, in consideration of Director's meeting the standard of personal performance for qualification and participation in the Sales Director Program, and in further consideration of the premises and the mutual covenants set forth in this Agreement including the provisions of the "General Terms and Conditions," and the "Schedule of Commissions and Bonuses" which are made a part hereof, Company hereby agrees to appoint Director as "Unit Sales Director" and Director agrees to accept such appointment together with all of the rights, benefits, privileges and responsibilities provided hereunder, which appointment shall become fully effective as of the date which appears above when this Agreement is executed by both parties and accepted by Company at its offices in Dallas, Texas.

IN WITNESS WHEREOF, the parties hereto have signed these presents effective as of the day and year first above written.

ACCEPTANCE ACKNOWLEDGED:


R. Bradley Glendening, Secretary

MARY KAY COSMETICS INC.

By: 
Larry E. Harley, President, U.S. Operations

DIRECTOR: _____

GENERAL TERMS AND CONDITIONS

SECTION 1. APPOINTMENT AS UNIT SALES DIRECTOR

Company, in sole consideration of Director's meeting standards of personal performance for qualification and participation in the Sales Director Program, and without the payment to Company of any monetary consideration whatsoever given or promised to be given by Director for such designation and rights, hereby names Director as "Unit Sales Director."

SECTION 2. SALES UNIT DEFINED

For the purposes of this Agreement, a Sales Unit shall be deemed to consist of:

- (i) All active Beauty Consultants personally recruited by a Sales Director; and
- (ii) All active Beauty Consultants recruited by members of a Sales Director's Sales Unit; and
- (iii) In certain cases, active Beauty Consultants from Sales Units which have not maintained the minimum sales necessary for continued recognition as separate Sales Units or whose Unit Sales Directors have relinquished their responsibilities for other reasons, whereupon such Beauty Consultants are transferred by Company to the Director's Sales Unit, provided that a Sales Unit may also be subject to loss of members by transfer when a member qualifies and is appointed as a Unit Sales Director, whereupon such qualifying Sales Director, all the qualifying Sales Director's personal recruits and any of their personal recruits who were recruited during the qualifying period are transferred to the newly formed Sales Unit.

Only persons residing in the U.S., its territories and possessions shall be eligible to become members of a Sales Director's Sales Unit under this Agreement unless otherwise provided in the Schedule of Commissions and Bonuses.

SECTION 3. COMMISSIONS AND BONUSES

3.1 Director shall have the right to receive from Company incentive compensation for Director's activities in promoting retail sales by Beauty Consultants which shall be in the form of a monthly commission based upon the total monthly wholesale purchases ("Wholesale Purchase Volume") of all Mary Kay cosmetics bought for resale by all members, including Director, of the particular Sales Unit counseled and advised by Director. For purposes of calculation of commissions payable hereunder, the monthly Wholesale Purchase Volume of the Sales Unit upon which commissions shall be payable shall be the sum of the net prices paid for all Mary Kay cosmetics purchased for resale by all members of Director's Sales Unit during a calendar month. Monthly commissions and bonuses, where applicable, shall be paid by Company to Director in accordance with the Schedule of Commissions and Bonuses attached and made a part hereof.

3.2 All commissions and bonuses shall be determined based upon all orders received and accepted by Company during the period from and including the first through the last business day of the month unless other dates shall be announced in advance by Company. Postmarked dates of orders shall not be taken into consideration and Company's stamped date of receipt of the accepted order shall be controlling for any determination of the date of receipt of an order under this section.

3.3 Company reserves the right to alter, modify or change the discount, commission and bonus and Minimum Sales Unit Production provisions of this Agreement from time to time by sixty (60) days prior written notice to Director.

SECTION 4. NON-COMMISSIONABLE ITEMS, COMMISSION CHARGE BACKS AND DEDUCTIONS

4.1 The Sales Director Program is intended to promote the development of a strong retail selling organization and consumer market for Mary Kay cosmetics. Therefore, no commission shall be payable on a new Beauty Consultant's purchase of a Beauty Showcase nor shall any compensation be paid solely for the act of introducing or recruiting a new Beauty Consultant into the Mary Kay organization. No commission shall be payable on the purchase of any sales aids or other items other than cosmetic products destined for use by consumers. Further, notwithstanding the fact that commission payments may be initially calculated and paid upon the Wholesale Purchase Volume of a Sales Unit, wholesale purchases by Beauty Consultants are viewed by Company as a measure of the retail sales activity of the individual Beauty Consultant and the Sales Unit as all Mary Kay cosmetics not sold to consumers are subject to return to the Company for repurchase by it at the election of any terminating Beauty Consultant.

4.2 It is expressly understood and agreed that upon the return of Mary Kay cosmetics and Company's repurchase of such products from any terminating Beauty Consultant within Director's Sales Unit, the commissions, bonuses or other sums payable to Director during the month following the month in which the return occurs shall be reduced by the amount of the commissions and bonuses previously paid upon such returned products (i.e., products which were not sold at retail), provided that any excess may be offset against amounts payable in later periods.

4.3 It is further expressly understood and agreed that any commissions or other sums payable by Company to Director may be reduced by any indebtedness of whatever nature owing by Director to Company.

SECTION 5. RIGHT TO USE COMPANY NAME, TRADE NAMES AND TRADEMARKS

5.1 Director shall have the right, subject to the limitations herein, to use the title "Independent Sales Director-Mary Kay Cosmetics" in or on stationery, office doors, vehicles, telephone directory listings and Company-approved advertising matter for promoting the sale of Mary Kay cosmetics, and not otherwise.

5.2 The rights granted herein do not include any right to use trademarks of Company in Director's trade name, except as specifically set forth herein or as authorized by Company in writing. Each use by Director of Company's trademarks, trade names and trading styles on business cards, letterheads, signs, advertisements, other promotional materials, or otherwise, shall include the words "Independent Sales Director" prominently displayed in the form set forth below (or any such other form as Company shall have previously authorized in writing):

(NAME OF SALES DIRECTOR)

INDEPENDENT SALES DIRECTOR
MARY KAY COSMETICS

5.3 To protect Director's Mary Kay business, the business of those Beauty Consultants in Director's Sales Unit and the Company from the risks of false, deceptive, misleading or unsubstantiated advertising claims or any unauthorized guarantees, warranties or representations, Director agrees not to use Company's trademarks or trade names in any type of advertising matter or literature (excluding sales literature and advertising formats supplied by Company for such purposes) without first obtaining Company's written permission.

5.4 Director shall not have the right or authority to use Company's name, trade names or trademarks in any manner or fashion which might result in Director's being deemed or represented to be a corporate official, partner, agent or employee of Company. In particular, neither the Company's corporate name nor any similar name, nor any trademark nor trade name of Company shall be used on Director's bank accounts, checks, or on any trade or credit card account of Director.

SECTION 6. RIGHT TO PARTICIPATE IN YELLOW PAGES ADVERTISING PROGRAM

6.1 Director shall have the right to participate in Yellow Pages advertising which employs the trademark "MARY KAY" in the telephone directories in only that county or parish in which Director permanently resides and has domicile, and only as authorized through the National Yellow Pages Advertising Agency designated in writing by Company. Recognizing the need for standardization of trademark advertising and the benefits and goodwill derived by Director in Director's Mary Kay business from such standardization, Director agrees that only such National Yellow Pages Advertising Agency may place telephone directory advertising under such registered trademarks as agent for Director.

6.2 Director agrees that in the event of termination of Director's status with Company for whatever reason, or upon Director's moving from any area in which authorized Yellow Pages advertising has been placed in a directory, any telephone service and numbers employed by Director in any telephone directory advertising shall, if requested by Company, either be changed, disconnected or assigned to Company for Company's use or disposition. In this connection, Director hereby authorizes any telephone company to deal with such telephone number solely on the authorization and direction of Company, and Director agrees to hold both telephone company and Company harmless from any claim of any kind or character whatsoever accruing from the disposition of such telephone service and numbers by telephone company at and in accordance with Company's direction.

SECTION 7. DIRECTOR'S SPECIAL RIGHTS, PRIVILEGES AND BENEFITS

7.1 Inasmuch as Director presently acts as an Independent Beauty Consultant purchasing Mary Kay cosmetics at wholesale from Company and selling to ultimate consumers of her choosing at retail and will continue to conduct this business, the parties agree that Director shall continue to have the rights, privileges, benefits and responsibilities of a Beauty Consultant as provided under the terms of Company's most current standard Beauty Consultant Agreement as effective from time to time together with all additional rights, privileges, benefits and responsibilities of a Unit Sales Director as provided under this Agreement.

If Director's Sales Unit shall fail to maintain the Minimum Sales Unit Production which Company considers essential to reflect the minimum sales activity of a properly motivated, interactive and viable Sales Unit and this Sales Director Agreement shall for such reason be terminated, the Beauty Consultant Agreement shall not be automatically terminated, but shall continue in effect between the parties until expressly terminated as a separate and independent agreement pursuant to its own terms and conditions.

7.2 Director shall have in addition to the other rights and privileges set out in this Agreement the following rights:

- (i) To use the copyrighted "Mary Kay Directors Guide" or any other copyrighted materials of Company, in connection with motivating, inspiring, aiding and counseling other Beauty Consultants, regarding their Mary Kay businesses; provided, however, that Director shall not copy or otherwise reproduce in any manner any copyrighted materials of Company without the express written approval of Company, nor use any copyrighted materials of Company in any manner which, in the opinion of Company, would be injurious to, or tend to impair, Company's right therein; and
- (ii) To purchase or otherwise receive such incentive, promotional items and materials, gifts and sales aids as may be made available by Company for Director's use in furthering the success of Beauty Consultants within her Sales Unit; and
- (iii) To compete for such recruiting, sales prizes, incentive and competitive awards as may be offered to Sales Directors by Company from time to time, subject to the rules and regulations established by Company with respect to such competition; and
- (iv) To participate in accordance with conditions set out for participation in any disability or insurance or other benefit programs which might, from time to time, be made available by Company or others for independent Sales Directors.

7.3 Director expressly acknowledges that by reason of Director's appointment by Company as an independent contractor Sales Director and service with Company in such capacity that Director receives numerous valuable rights, privileges and benefits including, but not limited to, the following:

- (i) Director receives from Company valuable specialized education and instruction covering motivation, selling and recruiting techniques relating to the direct sales method of product marketing and specific education and instruction concerning cosmetic products and the art of cosmetic application;
- (ii) Director receives increased financial compensation in the form of special commissions and bonuses together with other valuable rights and benefits available only to persons who have been appointed by contract and serve in the position of Sales Director in the Mary Kay independent contractor sales organization;
- (iii) Director is recognized by Company as a leader and motivator of a sales group comprising numerous independent contractors, including salespeople other than individuals personally recruited by Director, and receives various commissions and bonuses relating to the Wholesale Purchase Volume and sales activities of such sales group;
- (iv) Director receives from Company personal access to Company-compiled reports and information including comprehensive lists of names, addresses, telephone numbers and detailed records of the purchases and sales activity of members of the Mary Kay independent sales organization and data identifying customers for Mary Kay products and other competitively valuable business information not generally known nor readily available to competitors or the general public in similar content, detail and form, and, which Director agrees to treat as confidential and not disclose or utilize for any purposes not approved or authorized by Company; and
- (v) Director receives from Company valuable recognition, publicity and promotional assistance which promotes Director's personal image as a successful leader, motivator, salesperson and recruiter, and which enhances Director's prestige and influence with members of the Mary Kay independent contractor organization.

SECTION 8. DIRECTOR'S RESPONSIBILITIES

8.1 Director recognizes that Director's earnings as Unit Sales Director are contingent upon the results of Director's efforts in promoting the sale of Mary Kay cosmetics and in inspiring, motivating, counseling and aiding others to become successful sellers of Mary Kay cosmetics. Director agrees to assume responsibility for offering effective, conscientious advice and assistance to Beauty Consultants wishing to avail themselves of Director's experience and suggestions for building successful Mary Kay businesses of their own.

8.2 Director agrees to use Director's best efforts to encourage and motivate Consultants in Director's Sales Unit to aspire for Sales Director status; to work conscientiously and diligently to recruit suitable Beauty Consultants; and to aid, help, counsel and advise cheerfully, conscientiously and promptly, Beauty Consultants who wish to avail themselves of Director's experience in the sale of Mary Kay cosmetics, recruiting, customer problems or otherwise.

Director, recognizing that Director will make personal appearances, present speeches, lectures and training sessions at various Mary Kay-related meetings and may, from time to time, produce and distribute to other members of the sales organization Unit newsletters and other Mary Kay-related sales training, promotional and motivational materials created by Director, hereby grants to Company the rights to film, videotape, record, photograph, reprint and otherwise reproduce, copyright and publish works depicting, quoting or derived from any such appearances, presentations and materials, which may also include Director's name, image and voice, together with the unlimited right to use all or any portion thereof in the original or edited form for any training, educational, promotional, marketing or advertising purposes which Company may deem appropriate.

8.3 Director agrees to maintain an adequate office either in Director's home or another suitable location for the proper conduct of Director's business within the city of Director's residence and domicile.

8.4 Director acknowledges that "MARY KAY" and its distinctive logotype designs, together with all other registered and unregistered trademarks from time to time used and claimed as Company-owned trademarks, are trademarks owned by Company as its exclusive property and Director agrees not to do any act detrimental to the validity of these marks or their ownership by Company or which would be injurious to the goodwill of Company related to these marks. Director agrees to use such trademarks only in such form and manner as may be prescribed by Company in this Agreement or as specifically authorized in writing by Company. Director also agrees to discontinue any use of any trademark, trade name or copyrighted material owned by Company upon receipt of written notice from Company that, in the opinion of Company, such use by Director is injurious to Company's rights, privileges and immunities in respect thereto.

8.5 Director acknowledges Company's exclusive rights to the trademark "MARY KAY" as well as exclusive rights of Company in and to all other trademarks that have been or may hereafter be adopted by Company. Director shall not in any manner represent that Director has any ownership in any Company trademark and specifically acknowledges that any use of any of said trademarks shall not create for Director's favor or benefit any right, title or interest in such trademarks, but all uses by Director of said trademarks shall inure to the benefit of Company. Furthermore, Director agrees to discontinue the use of any trademark or trade name which is the same or deceptively similar to any trademark or trade name of the Company upon receipt of written notice from Company when, in the opinion of Company, such use by Director will in any way impair or tend to impair the Company's rights in, or the goodwill represented by, such trademarks and trade names.

8.6 For so long as Director is authorized to use the name "MARY KAY" in connection with the sale of any products under the terms of this Agreement, Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.

8.7 Director agrees to conduct Director's business in accordance with the highest standards of integrity, honesty and responsibility in all dealings with customers, fellow Sales Directors, Beauty Consultants and the Company, and to constantly emphasize and promote the necessity of good customer relations.

8.8 Director agrees to schedule and hold such meetings, workshops, demonstrations, orientation sessions and other motivational and educational programs as, in the judgment of Director, shall be necessary and appropriate to motivate and aid Beauty Consultants within Director's Sales Unit and those Sales Directors directly developed by Director in attaining proficiency and success in their Mary Kay businesses.

8.9 Director agrees to call to the attention of the Company and recommend that the Beauty Consultant Agreement of any Beauty Consultant be terminated if the Beauty Consultant is believed by Director to have engaged in any unfair, unethical or unlawful business practices or other acts in violation of the terms of the Beauty Consultant Agreement with Company which would be materially detrimental to the public image of Company or the goodwill relating to its products, trademarks and trade names, outlining details of specific violations for Company's consideration and appropriate action.

8.10 In consideration of the commission compensation provided under this Agreement and the other rights and benefits provided hereunder, Director agrees to continuously and faithfully employ Director's best efforts to promote the sale of Mary Kay cosmetics in the United States market during the period this Agreement is in effect. Director further agrees not to engage, directly or indirectly, in soliciting or recruiting Mary Kay Beauty Consultants or other Sales Directors to sell products or services other than those sold by Company during the period this Agreement is in effect and for a period of two (2) years after its termination. Director further agrees not to utilize, or knowingly permit any other person to utilize, any names, mailing lists or other non-public business information which Director obtains during Director's association with Company for recruiting or for promotion of the sale of any other company's products in the United States during the period that this Agreement is in effect and for a period of two (2) years after its termination. Director further agrees that during the period of Director's business relationship with Company as a Sales Director and for a period of two (2) years following date of any termination of such status for any reason, that Director will refrain from directly or indirectly soliciting or inducing any Sales Director or Beauty Consultant to terminate their business relationship with Company, whether such solicitation or inducement be for Director's own account or that of others. Director further expressly agrees to refrain, during the period of Director's relationship with Company as a Sales Director and for a period of two (2) years following the date of any termination of such status, from seeking, receiving or accepting, directly or indirectly, any fee, commission, override commission, financial benefit, contract right, monetary or non-monetary reward or other form of compensation from any other company or business organization based on or associated with the solicitation, recruitment, enrollment or association by employment, contract or otherwise for such company or business organization of any person whom Director knows or has reason to believe is then under contract as a member of the Mary Kay independent sales organization. Director agrees that Company may have, in addition to any other remedies available at law, an injunction restraining Director from any violation of the terms of this Section 8.10, and that a temporary restraining order may be issued, without prior notice to Director, upon sworn application therefor being made by Company setting forth the facts constituting any such alleged violation.

SECTION 9. TERM OF AGREEMENT

Unless otherwise terminated pursuant to the provisions hereof, the initial term of this Agreement shall commence on the date first above written and end on December 31 of the same year and the Agreement shall be automatically renewed each January 1 thereafter for additional periods of one (1) year each.

SECTION 10. TERMINATION

10.1 Either party may terminate this Agreement by written notice to the other party mailed at least thirty (30) days prior to date of intended termination.

10.2 This Agreement regarding Director's activities may be terminated at Company's option if Director shall fail to comply with any of the terms and conditions of this Agreement or in the event of any of the following specific acts or occurrences:

- (i) If Director shall knowingly submit false or fraudulent information to Company to receive any prize, award, bonus or commission payment based upon Wholesale Purchase Volume, recruiting or personal sales or knowingly make any material misrepresentation of fact in connection therewith; or
- (ii) If Director shall knowingly submit or participate in the submission of any order which is not a bona fide order placed by the named purchaser for subsequent retail sale as a Beauty Consultant; or
- (iii) If Director should do any act detrimental to the reputation of Company or its products or should do any act detrimental to any trademark, trade name or the goodwill connected therewith or any copyright owned by Company; or
- (iv) If Director should fail to pay when due any indebtedness to Company, to other Directors, Consultants or customers, or engage in other credit practices deemed detrimental to the image and goodwill of Company and its associates; or
- (v) If Director should become physically or mentally incapacitated (incapacity being determined in the sole judgment of Company), or withdraw voluntarily or involuntarily from active participation in the conduct of her business as a Sales Director; or
- (vi) If Director should engage in any activity or conduct in violation of the provisions of Section 8.10; or
- (vii) If any dispute, disagreement or controversy should develop between Director and fellow Sales Directors or between Director and Beauty Consultants in Director's Sales Unit, which in the sole judgment of Company may adversely affect the reputation of Company, the reputation of Mary Kay cosmetics or the goodwill related to the trademarks or trade names owned by Company; or
- (viii) If the Wholesale Purchase Volume of Director's Sales Unit for two (2) consecutive calendar months should be less than the Minimum Sales Unit Production defined in the Schedule of Commissions and Bonuses and no extenuating circumstances, as determined in the sole judgment of Company, be present. (If Company shall determine that extenuating circumstances do exist, it shall, by written notice, advise Director of the particular month or months, during and at the end of which, total monthly Wholesale Purchase Volume of the Sales Unit must again meet the monthly Minimum Sales Unit Production.); or
- (ix) If, for any reason, Director shall leave and remain outside of the United States, its territories and possessions, for a total of ninety (90) days or more during any period of twelve (12) consecutive calendar months.

Termination under this Section 10.2 shall be effective at Company's option upon delivery to Director of written notice of termination or at such other subsequent date as may be specified in such notice, except in the case of termination for failure to maintain Minimum Sales Unit Production, in which case termination may be made effective by Company as of the last day of the last full calendar month that Director's Sales Unit failed to meet Minimum Sales Unit Production.

10.3 This Agreement shall terminate immediately upon Director's death, provided that the final commission payment shall be calculated and paid as though such termination became effective on the last day of the month in which the death occurred.

10.4 Upon termination of this Agreement any and all rights and privileges Director has in regard to Director activities under this Agreement shall terminate. Upon termination of Director status, Director will immediately discontinue all uses of Company's trade name, trademarks or copyrighted materials in forms which are authorized only for use by Sales Directors. The terminated Director will also make or cause to be made such changes as Company may direct in office door signs and vehicles, telephone directory listings and telephone service to eliminate any further identification or representation of Director as an independent Sales Director associated with Company and any related uses of the Company's trade name and trademarks in Yellow Pages or other advertising. Upon request by Company, Director will return to Company any printed materials or literature furnished or made available by Company for the exclusive use of Sales Directors.

SECTION 11. RELATIONSHIP — INDEPENDENT CONTRACTOR

11.1 The relationship created and intended to be created is that Director acts as an independent contractor for commission compensation measured by the results achieved, the measurement of those results being the Wholesale Purchase Volume and recruiting activity of Director's Sales Unit. It is recognized that Director is not a joint venturer with, or partner, agent or employee of Company. Nothing in this Agreement shall be deemed to permit or empower Director to conduct business in the name of, or on account of, Company, or to incur or assume any expense, debt, obligation, liability, tax or responsibility in behalf of, or in the name of Company, or to act in Company's behalf or to bind Company in any way whatsoever. Company shall not have and reserves no right or power to determine or control the manner, means, modes or methods by which Director performs Director's activities or accomplishes Director's objectives hereunder and shall only look to Director for results achieved.

11.2 Director likewise recognizes that those Beauty Consultants forming Director's Sales Unit are each and all independent contractors whom Director serves at their initiative, as a "Business Consultant," making available to them, at their request, and for their voluntary acceptance or rejection, Director's advice and experience gained as a consistent recruiter of others and proficient seller of Company's products. Director recognizes and acknowledges that Director shall have no right or power to determine or control the manner, means, modes or methods by which each Beauty Consultant performs such Beauty Consultant's activities or accomplishes such Beauty Consultant's objectives as an independent purchaser and re-seller of Company's products.

11.3 As an independent contractor Director shall have the obligation to file all necessary income tax returns to reflect all self-employment income in a manner required by any applicable state or Federal laws or governmental regulations and in connection therewith Company shall furnish Director with a statement in the form prescribed by law reflecting all compensation including all commissions, prizes, awards, or other compensation paid by Company to Director or on Director's behalf during the year or other legally prescribed reporting period.

11.4 The independent Director will not be treated as an employee with respect to any services for state or Federal tax purposes, or otherwise.

SECTION 12. INDEMNIFICATION

Director acknowledges that Director is an independent contractor and solely responsible for any claims, losses, damages or liability arising out of Director's activities hereunder. Director agrees to indemnify and hold Company harmless from and against any and all such claims, losses, damages or liability, including, without limitation, claims arising out of false or misleading advertising or misrepresentations by Director concerning product effectiveness, earnings opportunity or Director's failure to comply with laws applicable to Director's business. Company acknowledges and agrees that Director is an independent contractor and not responsible for any claims, losses, damages or liability arising out of the activities of Company, nor of claims of Beauty Consultants against Company by virtue of its activities, nor for claims alleging inherent product defects, and Company agrees to indemnify and hold Director harmless from any and all such claims, losses, damages or liability for which Company is responsible.

SECTION 13. ASSIGNABILITY

This Agreement, or any part hereof, shall not be assigned or transferred by Director and may be assigned by Company only to its successor.

SECTION 14. PARTIAL INVALIDITY

Each provision of this Agreement is intended to be several. If any term or provision hereof is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the other provisions of this Agreement.

SECTION 15. WAIVER

No provision of this Agreement shall be waived or modified by any failure to insist upon same; or in any manner whatsoever other than by express writing duly signed by the party having the benefit of such provision.

SECTION 16. COMPLETE AGREEMENT

This Agreement contains the entire agreement between Company and Director relating to the subject matter hereof and no representation, inducement, promise, or agreement, oral or otherwise, including terms of any prior Agreement between the parties not embodied herein shall be of any force or effect. This Agreement may not be amended, modified, or altered in any respect except by a document in writing signed on behalf of Company by an authorized Company officer and shall not be deemed to be changed, modified or altered by reason of any advice, suggestions, manuals or sales aids furnished by the Company to Director.

SECTION 17. GOVERNING LAW

This Agreement is subject to acceptance by Company at its corporate headquarters in Dallas, Texas and shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance. The parties further agree that if any dispute or controversy should arise 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.

SECTION 18. NOTICES

Any notice permitted or required to be given in connection with this Agreement must be in writing, at the giver's expense, and may be given by Certified or Registered Mail and shall be deemed to have been given and received when a Certified or Registered Letter containing such notice, properly addressed, with postage prepaid is deposited in the United States Mail; and if given otherwise than by Certified or Registered Mail, it shall be deemed to have been given when addressed to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the following addresses:

If to Company:
Mary Kay Cosmetics, Inc.
Attn: Legal Department
8787 N. Stemmons Freeway
Dallas, Texas 75247-3794

If to Director:
At the address shown on
the first page hereof.

The foregoing addresses of the respective parties hereto for purposes of notice hereunder may be changed by any such party by written notice given in the manner aforesaid to the other party hereto.

SCHEDULE OF COMMISSIONS AND BONUSES

I. SALES DIRECTOR

A. MINIMUM SALES UNIT PRODUCTION

For purposes of this Agreement the "Minimum Sales Unit Production" for Director's Sales Unit shall be \$3,000.00 per month until January 31, 1994 and \$4,000.00 per month thereafter, which is the minimum monthly Wholesale Purchase Volume deemed essential to reflect the results expected from Director's appointment and the minimum sales activity of a properly motivated, interactive and viable Sales Unit.

B. COMMISSIONS & BONUSES

1. DIRECTOR UNIT COMMISSION SCHEDULE

Director shall be entitled to commissions on the monthly Wholesale Purchase Volume of Director's Sales Unit which shall be payable during the next subsequent month as follows:

MONTHLY UNIT WHOLESALE PURCHASE VOLUME	COMMISSION
0 to \$ 3,999	9%
\$4,000 or more	13%

2. DIRECTOR BONUS SCHEDULE

a. DIRECTOR UNIT VOLUME BONUS

MONTHLY UNIT WHOLESALE PURCHASE VOLUME	BONUS
\$ 0 to \$ 3,999	(See following Section regarding Director Personal Recruit Bonus)
\$ 4,000 to \$ 5,999	\$ 300
\$ 6,000 to \$ 7,999	\$ 500
\$ 8,000 to \$10,999	\$ 800
\$11,000 to \$13,999	\$1,000
\$14,000 to \$17,999	\$1,200
\$18,000 to \$23,999	\$1,500
\$24,000 to \$29,999	\$2,000
\$30,000 to \$35,999	\$2,500
\$36,000 to \$39,999	\$3,000
\$40,000 or more	\$3,500

b. DIRECTOR PERSONAL RECRUIT BONUS SCHEDULE

NUMBER OF DIRECTOR'S PERSONAL RECRUITS	BONUS
1 new personal recruit with minimum \$600 in wholesale orders during first month of activity.	\$ 75
2 new personal recruits with minimum \$600 in wholesale orders during the first month of activity.	\$175
3 or more new personal recruits with minimum \$600 in wholesale orders during the first month of activity.	\$300

Special Provisions:

- (1) Directors are eligible for Director Personal Recruit Bonus for 12 months after debut regardless of monthly wholesale production. "Debut" refers to original appointment as Sales Director. The date of debut will be the effective date of the individual's original Sales Director Agreement.
- (2) Senior Directors and Executive Senior Directors are eligible for Director Personal Recruit Bonus for three months after the debut of an offspring Sales Director regardless of their monthly wholesale production.

C. Director Commission and Director Bonuses will be paid on the basis of wholesale orders and Agreements received and accepted by the Company by 7:00 p.m. of the last working day of each month. To count for the Director Personal Recruit Bonus, the completed Beauty Consultant Agreement for the new recruit and minimum wholesale purchases of at least \$600 of products from Section I of the Consultant order sheet by the new recruit must be processed in the same calendar month.

II. SENIOR DIRECTOR AND EXECUTIVE SENIOR DIRECTOR

A. **QUALIFICATION:** Director shall have the opportunity to earn additional incentive compensation by inspiring, motivating, counseling and aiding a member of Director's Sales Unit to meet the qualification requirements for Unit Sales Director. Director shall thereby become entitled to receive from Company additional monthly cash commission payments based upon the Wholesale Purchase Volume of the Sales Unit ("Offspring Sales Unit") formed by a Sales Director developed directly out of Director's Sales Unit, so long as such Offspring Unit shall remain an active Sales Unit. Director shall be designated "Senior Director" as to any such newly formed Offspring Unit and may thereafter qualify as an "Executive Senior Director" pursuant to the following qualification requirements:

1. Senior Director: To be qualified as a Senior Director and receive commissions on Offspring Sales Units, Director must have at least one active, first-line offspring Director.
2. Executive Senior Director: To be qualified as an Executive Senior Director and receive commissions on Offspring Sales Units, Director must have at least five active, first-line offspring Directors.

B. SENIOR DIRECTOR AND EXECUTIVE SENIOR DIRECTOR OFFSPRING SALES UNIT COMMISSION SCHEDULE

Personal Unit Monthly Wholesale Production	Number of Offspring Units	Offspring Commission*
Tier 1 \$0 to \$3,999	One or more	2.0%
	One to three	4.0%
Tier 2 \$4,000 to \$11,999	Four to six	4.5%
	Seven or more	5.0%
	One to three	5.0%
Tier 3 \$12,000 or more	Four to six	5.5%
	Seven or more	6.0%

* **Special Provisions:**

1. The minimum offspring Sales Unit commission rate will be 4%.
2. A Senior Director or Executive Senior Director shall be paid at the Tier 3 offspring commission rates for three months after the debut of a new offspring Sales Unit. Thereafter, the Senior Director's or Executive Senior Director's personal Sales Unit's monthly wholesale production determines the tier at which Offspring Sales Unit commission is earned.
3. Senior Directors and Executive Senior Directors are eligible for the Director Personal Recruit Bonus for three months after the debut of an Offspring Sales Unit.
4. Canadian and Mexican Offspring Sales Units are included for purposes of Senior and Executive Senior Director commissions.

C. COMMISSIONS ON CANADIAN AND MEXICAN SALES

1. CANADA. For purposes of determining commissions for eligible Senior Sales Directors who have Offspring Sales Units in Canada, the Unit Wholesale Purchase Volume of purchases of *Mary Kay* products from Mary Kay Cosmetics Ltd. ("Mary Kay Canada") shall be calculated in U.S. dollars and monthly commissions paid in U.S. dollars based on a standard rate of exchange determined as of the close of business on the last business day of the month in which such commissions are earned. Commissions earned by Director on the sale of Mary Kay Canada products shall be paid monthly by Mary Kay Canada during the month following the month in which the commissions are earned. All commission payments shall be subject to any applicable laws and regulations of the U.S. and Canadian governments.
2. MEXICO. For purposes of determining commissions for eligible Senior Sales Directors who have Offspring Sales Units in Mexico, the Unit Wholesale Purchase Volume of purchases of *Mary Kay* products from Mary Kay Cosméticos de México, S.A. de C.V. ("Mary Kay Mexico") shall be calculated in U.S. dollars and monthly commissions paid in U.S. dollars based on a standard rate of exchange determined as of the close of business on the last business day of the month in which such commissions are earned. Commissions earned by Director on the sale of Mary Kay Mexico products shall be paid monthly by Mary Kay Cosmetics, Inc. during the month following the month in which the commissions are earned. All commission payments shall be subject to any applicable laws and regulations of the U.S. and Mexican governments.

D. EXECUTIVE SENIOR DIRECTOR PERSONAL RECRUIT COMMISSION12% Commission

QUALIFICATION: To qualify to receive an Executive Senior Director Recruit Commission of 12% on the monthly Wholesale Purchase Volume of Director's personal recruits, Director must be an active Executive Senior Director who has:

1. Five or more personal recruits who each place a minimum \$180 wholesale order in a calendar month, *plus* Personal production of \$600 wholesale or more in that same calendar month,
OR
2. One new personal recruit with Agreement and minimum \$600 wholesale order submitted in that same calendar month.

EXHIBIT 3

Laura M. Beitler
Senior Attorney, Legal Resources

MARY KAY

August 10, 2006

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND
REGULAR U.S. MAIL**

Ms. Robin Blackmon-Dunda
Independent Executive Senior Sales Director
3901 Pebblebrook Lane
Bedford, Texas 76021-3116


Dear Robin:

As you know, under the terms of the Mary Kay Independent Beauty Consultant Agreement and Independent Sales Director Agreement, either party to the Agreement has the right to terminate these Agreements between the parties upon thirty (30) days prior written notice. After careful consideration, we have decided it would be in the best interest of both parties if the Independent Sales Director and Independent Beauty Consultant Agreements between us were terminated. Accordingly, this letter will constitute notice to you that both Agreements will be terminated effective thirty (30) days from the date of this letter, effective September 9, 2006.

It is not our intention to cause anyone a financial hardship when an Agreement is terminated. Therefore, the Company offers to repurchase all repurchasable company products according to the terms and conditions of the Independent Beauty Consultant Agreement, specifically Section 6-8 of the second part of the Agreement. Under these provisions, the Company agrees to purchase, upon termination of the Agreement, at ninety percent (90%) of the Consultant's original net cost, new and unused showcase and Section 1 products provided they were purchased by the Consultant from the Company within one (1) year prior to return. Eligible showcase and Section 1 products must be shipped freight prepaid and accompanied by a Request for Repurchase form to our Repurchase Department, 1330 Regal Row, Dallas, Texas 75247. You should note that the Company's cost of any prizes or product bonuses awarded to a Consultant, because of an original purchase and any indebtedness the Consultant owes the Company will be deducted from the repurchase amount according to the terms of the Agreement.

We wish you well in your future endeavors.

Sincerely,



Laura M. Beitler

cc: Jo Ann Blackmon, Independent National Sales Director
Judy Musser, Consultant Records Department
Leah Cardinal, Consultant Records Department

EXHIBIT 4

MARY KAY®

FOR FURTHER INFORMATION CALL:
CORPORATE COMMUNICATIONS
PHONE: 972.687.5332 FAX: 972.687.1611
www.marykay.com

MARY KAY INC. 2006 Fact Sheet

- Mary Kay Inc. is one of the largest direct-selling skin care and color cosmetics companies in the world.
- Mary Kay Inc. has more than 1.6 million Independent Beauty Consultants worldwide. Since opening its first international venture in Australia in 1971, Mary Kay Inc.'s international presence spans more than 30 markets.
- In 2005, sales exceeded \$2.2 billion at the wholesale level.
- In addition to the exclusive pink Cadillac, the Career Car Program features the Pontiac Grand Prix and the Pontiac Vibe. Since the inception of the Career Car Program, more than 100,000 Independent Beauty Consultants have either qualified to earn the use of a Mary Kay career car or elected the Cash Compensation option.
- Mary Kay develops, tests, manufactures and packages the majority of its own products at its state-of-the-art plants in Dallas and China.
- Mary Kay does not conduct animal testing for its products and is a PETA pledge member.
- Nearly 500 women worldwide have attained the position of Independent National Sales Director, the highest status within the independent sales force.
- More than 200 Independent National Sales Directors in the United States have earned more than \$1 million in commissions.
- More than 31,000 women across the world have reached the rank of Independent Sales Director. In the United States, more than 14,000 women have attained this position.
- Starting a Mary Kay independent business costs as little as \$100 (plus tax and shipping) for a Starter Kit and educational materials.
- Mary Kay Inc. awards more than \$50 million annually in incentive awards to Independent Beauty Consultants and Independent Sales Directors.
- Mary Kay's world headquarters in Dallas totals nearly 600,000 square feet and can accommodate more than 1,200 employees.
- Richard Rogers, cofounder of Mary Kay Cosmetics and son of Mary Kay Ash, resumed duties as CEO in June 2001.
- Mary Kay Ash passed away on Thanksgiving Day, November 22, 2001.

- more -

2003 FACT SHEET

Page 2

- Mary Kay Ash's autobiography has sold more than two million copies, and her two other books, *You Can Have It All* and *Mary Kay on People Management*, achieved best-seller status.
- Mary Kay Inc. is a member of the Direct Selling Association (DSA). The Company has been awarded two prestigious DSA awards in recent years: in 2001, the *Industry Innovation Award* for the Company's Personal Web Site program, which assists the independent sales force with their businesses; and in 2002, the *Vision for Tomorrow Award* for underwriting the groundbreaking documentary "Breaking the Silence: Journeys of Hope" that addresses the issue of violence against women.
- Mary Kay Inc. is one of 20 company profiles in the 1996 book, *Forbes Greatest Business Stories of All Time*. Mary Kay Ash is the only woman included.
- The Mary Kay Ash Charitable Foundation was created in 1996 to fund research of cancers affecting women, and in 2000, it expanded its mission to include the prevention of violence against women.
- Online orders from its independent sales force account for more than 90 percent of Company revenues. Mary Kay Inc. was noted as one of the top companies in the world in online sales according to *Interactive Week* magazine, and its Web site has been honored by *CIO* and *Darwin* magazines.

Mary Kay Inc., one of the largest direct sellers of skin care and color cosmetics in the world, achieved another year of record results in 2005 with \$2.2 billion in wholesale sales. The independent sales force exceeds 1.6 million Mary Kay Independent Beauty Consultants in more than 30 markets worldwide. To learn more about the Company or to find an Independent Beauty Consultant, log on to www.marykay.com or call 1-800-MARY KAY (627-9529).

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EXHIBIT 5

MARY KAY®

FOR FURTHER INFORMATION CALL:
CORPORATE COMMUNICATIONS
PHONE: 972.687.5332 FAX: 972-687-1611
www.marykay.com

THE MARY KAY BUSINESS OPPORTUNITY

Mary Kay strives to deliver the most rewarding business opportunity for women worldwide.

- **Career:** With flexible hours and open-ended financial opportunities, a Mary Kay business is the ideal choice for women worldwide. Mary Kay focuses on the needs of modern women — no matter their background — and provides extensive and ongoing Company support, educational materials and recognition.
- **Entrepreneur:** A Mary Kay Independent Beauty Consultant owns her own independent business. She is her own boss and sets her own schedule, yet she has the support from the Company to help make her business a success.
- **Direct Selling:** All Independent Beauty Consultants — regardless of their position in the independent sales force — purchase their products from the Company at wholesale and then sell directly to their customers at a retail price they set.
- **Earnings:** Independent Beauty Consultants decide how quickly they want to build their businesses. Earnings potential is open-ended and based on personal ambitions.
- **Personal Growth:** While a Mary Kay business can offer financial security and lucrative earnings potential, increased self-esteem, self-confidence and personal growth can be additional rewards.
- **Education:** Independent Beauty Consultants are offered education, motivation and recognition and enjoy camaraderie during weekly unit meetings conducted by Independent Sales Directors and at Company-hosted conferences.

Progression of the Independent Sales Force

The marketing plan and independent sales organization allow for well-planned career growth — starting as an Independent Beauty Consultant, progressing to an Independent Sales Director and, ultimately, reaching the pinnacle of success, an Independent National Sales Director.

- **Independent Beauty Consultant:** Independent Beauty Consultants focus on the fundamentals of establishing customer relationships, booking appointments, sharing the Mary Kay business opportunity and operating a profitable business.
- **Independent Sales Director:** After an Independent Beauty Consultant advances to Independent Sales Director, she provides her sales unit with ongoing leadership and guidance. The Independent Sales Director earns her status through proven selling and team-building skills, as well as her ability to motivate and lead other Independent Beauty Consultants. Currently, more than 14,000 women in the United States are Mary Kay Independent Sales Directors.

- more -

MARY KAY BUSINESS OPPORTUNITY

Page 2

- **Independent National Sales Director:** Reaching the top of Mary Kay, Independent National Sales Directors provide leadership, mentoring and motivation to the independent sales force. Many travel to conduct workshops and classes to offer their expertise in the field. Nearly 500 women worldwide have reached the position of Mary Kay Independent National Sales Director.

The Mary Kay Consultation

Top-Quality Products, Customer Service and Education

An Independent Beauty Consultant's customer receives information about Mary Kay® products and their benefits as well as advice on how to make the most of her natural beauty at skin care classes, collection previews or individual consultations, typically scheduled by appointment.

Customers receive one-on-one beauty advice and the latest information and instruction on skin care, color cosmetics and application techniques from a knowledgeable Independent Beauty Consultant, typically in the privacy of the customer's home or office. Customers receive personalized advice on proper skin care and makeup application and are taught to apply the products themselves so they can easily replicate the results. In addition to the opportunity to try products prior to purchase, all Mary Kay® products are backed by a 100-percent satisfaction, money-back guarantee.

Mary Kay Inc., one of the largest direct sellers of skin care and color cosmetics in the world, achieved another year of record results in 2005 with \$2.2 billion in wholesale sales. The independent sales force exceeds 1.6 million Mary Kay Independent Beauty Consultants in more than 30 markets worldwide. To learn more about the Company or to find an Independent Beauty Consultant, log on to www.marykay.com or call 1-800-MARY KAY (627-9529).

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EXHIBIT 6

Nathan P. Moore
Senior Vice President,
General Counsel & Secretary

MARY KAY

July 17, 2006

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580
ATTN: Donald S. Clark, Secretary

Re: Comments of Mary Kay Inc. to the proposed Business Opportunity Rule,
R511993

Dear Secretary Clark:

Mary Kay Inc. ("Mary Kay" or "Company") respectfully submits the following comments on the Notice of proposed Rulemaking ("NPRM" or "proposed Rule") of the Business Opportunity Rule to the Federal Trade Commission ("FTC" or "Commission") published in the Federal Register, 16 CFR Part 437, on April 12, 2006.

Mary Kay agrees that it is critical to protect Americans by eliminating business opportunity fraud. However, we believe the proposed Rule would subject Mary Kay and our independent sales force members to impractical, unnecessary and burdensome compliance requirements which would devastate our 43 year old Company known widely for its steadfast commitment to ethical and legitimate business practices. As such, we believe it is imperative that the Final Rule not apply to legitimate direct selling companies that have multiple consumer protections already built into their recruiting and sales processes.

In these comments we will: provide background information about our Company, our long-standing consumer protections, and the Mary Kay independent sales force; analyze specific sections of the proposed Rule that we believe will adversely affect our business without any concomitant consumer benefit; and detail specific reasons why we believe that the proposed Rule is unnecessary and could create consumer confusion.

I. Introduction to Mary Kay

Mary Kay is a family-owned direct selling company engaged in the business of manufacturing and distributing at wholesale cosmetics, toiletries and fragrances.

Mary Kay Inc.
P.O. Box 799045
Dallas, TX 75379-9045
972-687-5770
Fax 972-687-1457
nathan.moore@mkcorp.com

The Company is headquartered in Dallas, Texas and was founded September 13, 1963, by Mary Kay Ash and her son, Richard R. Rogers. It maintains its principal manufacturing plant in Dallas, Texas. Mary Kay conducts business in over thirty countries around the world. There are 1.6 million Independent Beauty Consultants worldwide, with over 700,000 in the U.S.

The Mary Kay business plan is to work with independent contractors known as Independent Beauty Consultants. The Independent Beauty Consultants purchase Mary Kay® products directly from the Company at wholesale and then resell those products to the ultimate consumer at a retail price determined by the Independent Beauty Consultant. A cornerstone of the Mary Kay business model is the fact that a Mary Kay Independent Beauty Consultant is an independent contractor, free to operate her Mary Kay business as she sees fit.

The Mary Kay structure is based on retail sales to the ultimate consumer via Independent Beauty Consultants. All products sold to end consumers are backed by a 100 percent Satisfaction Guarantee. The quality of Mary Kay® products and the success of Mary Kay Ash's vision are demonstrated by the fact that, in 2005, Mary Kay was once again the best-selling brand in the combined categories of facial skin care and color cosmetics in the U.S. (based on the most recent industry sales data and actual Mary Kay sales). This is not an isolated accomplishment – Mary Kay has been able to make this claim for 11 of the past 12 years.

A. Our Company's Mission, Principles and Values

Mary Kay's mission is to enrich women's lives. More than 40 years after Mary Kay Ash founded the Company, Mary Kay still embodies the core philosophies of its founder: to use the Golden Rule as a business guide and to help women live a balanced life by placing God first, family second and career third. Thousands of Independent Beauty Consultants through the years have embraced these tenets and enjoy personal success based on this approach.

B. Company Honors, Awards and Recognition

Mary Kay Ash and her Company are truly American success stories. Having started her business in a storefront in Dallas, Texas to provide women with opportunities, Mary Kay Ash is a role model for corporate culture and responsibility, and an inspiration to working women. For example, in 2003 Mary Kay Ash was named the greatest female entrepreneur in American history by Baylor University. Mary Kay is one of 20 companies profiled in the 1996 book, *Forbes Greatest Business Stories of All Time*, and Mary Kay Ash is the only woman featured. Mary Kay Ash and the Company have been the focus of countless business school studies on the Mary Kay sales methods and ethical leadership practices. The Company's and Mary Kay Ash's milestones, accolades, and third party recognition are attached as Attachment A to these comments.

C. Mary Kay Independent Beauty Consultants

Mary Kay's U.S. independent sales force is filled with small business owners, typically operating their businesses on a part-time basis. They become Independent Beauty Consultants to meet short-term financial goals – such as the purchase of holiday gifts for their family, to replace an appliance in their home, or to pay for school clothes or tuition for their children. The money they earn is regularly used to supplement their family income, although some Independent Beauty Consultants choose to work their business full time and make it their “career.” Indeed, it is this flexibility of schedule that allows these women the luxury of staying at home with their children or conducting their Mary Kay business in conjunction with their full-time employment.

An overwhelming number of Mary Kay Independent Beauty Consultants are women. They, however, are extremely diverse – from housewives to urban professionals and from all socioeconomic backgrounds. In short, there is no “typical” Independent Beauty Consultant.

Becoming an Independent Beauty Consultant is convenient, simple, and straightforward - an individual signs a one page Independent Beauty Consultant Agreement (“Agreement”) and purchases the Starter Kit for approximately \$100. This kit contains business tools and literature, as well as a generous amount of full sized Mary Kay® products with a retail value of over \$300. Furthermore, to reduce the risk of loss for a new Independent Beauty Consultant and to allow for changed circumstances, the Company contractually allows the return of the Starter Kit for a full, 100 percent refund within the first thirty days after an Agreement is signed.

No compensation is earned by anyone on this Starter Kit purchase, i.e. for “introducing” a new Independent Beauty Consultant. This kit contains everything an Independent Beauty Consultant needs to immediately begin conducting skin care classes. At those classes, she can take orders for products and then at a later time purchase product from the Company at wholesale to fulfill those orders. Alternatively, if she chooses, an Independent Beauty Consultant can purchase an inventory of product to have on hand at her skin care class to fill any orders she may receive immediately. The choice of whether or not to buy inventory (including how much or how little she may want to purchase) is completely up to her.

All Independent Beauty Consultants purchase their products and inventory directly from Mary Kay at the same wholesale price. There are no levels of wholesalers between the Company and the consumer, therefore all members of the independent sales force purchase Mary Kay products directly from the Company at the same published wholesale prices for resale to consumers of their choice at retail prices they set.

The Independent Beauty Consultant Agreement is simple and straightforward. The key terms provide: 1) the Independent Beauty Consultant's right to purchase products from the Company at wholesale for the purpose of selling such products to the end consumer; 2) protections of the Company's federally registered trademarks

and service marks; 3) the independent contractor status of the Independent Beauty Consultant; and 4) the rights the Independent Beauty Consultant has with regard to receiving a 100 percent refund for her Starter Kit within the first 30 days and the Company's promise to buy back, at 90 percent of the Beauty Consultant's original cost, any of the products she purchased at wholesale from the Company within one year from the date of purchase. Furthermore, there are no provisions in the Independent Beauty Consultant Agreement that prohibit the Independent Beauty Consultant from conducting other direct selling businesses, even businesses that compete directly with Mary Kay. This flexibility applies both during as well as after her Mary Kay business may end.

Independent Beauty Consultants can earn money through two avenues of income. First and foremost, they earn money from the profit they receive from the retail sale of Mary Kay® products. Then, if an Independent Beauty Consultant chooses to introduce others to Mary Kay, she can receive compensation based upon the retail sale of products by those individuals.

Like other direct selling companies, Mary Kay has structured its business model to accommodate these part-time micro-entrepreneurs (we would estimate that approximately 80 percent or more of the Mary Kay sales force members are part time) by: (1) ensuring the simplicity of the contractual provisions associated with their business; (2) lowering the barriers to entry through the nominal cost of the Starter Kit; and (3) not requiring the purchase of inventory to begin their business. The option of only purchasing products from Mary Kay to fill orders also reduces any financial outlay or risk on the part of the Independent Beauty Consultant.

The low cost of a Starter Kit with a 100 percent, 30 day buy back guarantee, the 90 percent inventory repurchase provision, the direct relationship of the Independent Beauty Consultant with Mary Kay, the flexibility in selling products from inventory or ordering via Mary Kay, and the ability to work-part time around other important personal obligations makes the Mary Kay opportunity a low risk venture with little or no need for burdensome or onerous disclosure requirements. Mary Kay has considered and met the needs of its sales force for over 40 years, and understands what protections – such as the buy back guarantees – are useful to a part-time sales force, and what requirements – such as laborious reporting requirements – fill no discernible need.

II. Applying the proposed Rule to Mary Kay

We understand that the proposed Rule has been modeled after the existing regulatory requirements for franchises, however, our business is vastly different from a franchise. Franchisees must sort through complex contractual obligations, are subject to geographic/territorial limitations, must invest a substantial amount of time and money, and are required to follow to the letter a set business program with specific rules and requirements. As stated previously, becoming a Mary Kay Independent Beauty Consultant is simple, straightforward and low in cost. If adopted the proposed Rule could create significant barriers to entry and have a devastating impact on our legitimate business, requiring Mary Kay to drastically

alter our 43-year old sales methods by subjecting us and our independent sales force members to impractical, unnecessary and burdensome compliance requirements. Therefore, Mary Kay provides the following discussion of specific requirements of the proposed Rule and the impact they would have if applied to our Company.

A. The Seven Day Waiting Period

A Mary Kay business is built on relationships – and the enthusiasm an Independent Beauty Consultant has with her family, personal friends, or co-workers when she tells them about our great Company, our products and her Mary Kay business. Women decide to become Independent Beauty Consultants after attending a skin care class and experiencing for themselves the effect of using our high quality products, or attending a guest night event and hearing compelling stories of personal growth and development, or learning how being an Independent Beauty Consultant has positively changed the personal situation of a family member or friend. The inspiration and enthusiasm associated with these events is a strong motivator which helps new Beauty Consultants to “hit the ground running” in their Mary Kay businesses. The ability to nurture and channel this enthusiasm can often mean the difference between success and failure for a new Beauty Consultant.

Requiring a seven day waiting period will stifle this enthusiasm and lessen the chance of the individual’s participation and /or success.¹ In our opinion the presale disclosure requirement is a significant barrier to entry – and makes the simple decision of becoming an Independent Beauty Consultant unnecessarily burdensome and complicated while delaying the ability to “hit the ground running” after her introductory experience.

Furthermore, we believe the proposed Rule’s disclosure requirements and waiting period needlessly creates an “air of suspicion” in the mind of a prospective Independent Beauty Consultant. A prospective Independent Beauty Consultant trusts the Mary Kay experience shared by her family, her friends, and her co-workers. If, in the future, prospective Independent Beauty Consultants are required to be presented with a presale disclosure document and wait a period of time for review, analysis, and examination, it would be natural for her to think “what is wrong here?” despite her general trust in her family and friends’ experience. Such suspicion would be misled in light of our 43 year history with legitimate and ethical business practices coupled with our built-in consumer safeguards, but nonetheless, these concerns would impact Mary Kay’s ability to continue to tell the Mary Kay story. This disclosure requirement would suggest a level of risk that simply does not exist.

Mary Kay is a member of the Direct Selling Association (“DSA”) and, as a condition of association membership, is required to provide Independent Beauty Consultants the opportunity to sell back any inventory they might have purchased from our Company within one year from date of purchase. Protected by this 90 percent buy-

¹ NPRM § 437.2.

back amount mandated under the DSA Code of Ethics, coupled with the promise to fully refund the Starter Kit within 30 days, a risk of financial loss by a Mary Kay Independent Beauty Consultant is quite limited, particularly in light of the minimal up-front costs otherwise involved with beginning in direct selling. Consequently, an interested prospect can reasonably determine that she wants to be involved in her own Mary Kay business, order a Starter Kit and start conducting her business and earning income immediately. The presale disclosures will not increase the consumer protections Mary Kay already provides through its buy back program.

If applied to Mary Kay, the proposed Rule's requirement that certain disclosures be given at least seven calendar days before an individual can become an Independent Beauty Consultant is impractical, unnecessary and would force fundamental changes to a low risk, 43-year old business model—making it one which is unnecessarily structured and regulated. With the seven-day waiting requirement in the proposed Rule, the Commission has potentially imposed a burden on low-risk, low-cost direct selling activities regardless of the potential for consumer loss, and of the consumer protection guarantees already established in programs such as Mary Kay.

B. Geographic references

Mary Kay strongly supports the concept of an informed purchaser and agrees that providing appropriate information to a prospective distributor is valuable. In fact, we subscribe to and support the current requirements of the DSA Code of Ethics which specifically requires that DSA member companies provide both the customer and the potential distributor with full and accurate information.

Based on our experience with the Mary Kay independent sales force we believe that appropriate and adequate information is currently being made available to prospective Beauty Consultants. We also believe that the proposal to require geographic references (alternatively known as the 10 person rule)² is an unnecessary, unmanageable, and impractical burden on our Company and sales force and could have a devastating impact on sales force recruiting, sales force income and our Company revenues.

Because many Beauty Consultants operate their Mary Kay businesses in addition to full time jobs and/or a full family life, they find ways to spontaneously and informally integrate their Mary Kay businesses into their everyday lives. Whether they are grocery shopping, attending their children's sporting events or participating in weekly book clubs – Independent Beauty Consultants enjoy and take advantage of the simplicity and flexibility found in their business. Their business is about building positive, encouraging relationships – and with no geographic territories imposed upon them, these conversations could just as easily occur on the beach while vacationing miles away from their home states.

² NPRM § 437.3(a)(6).

As described above, a Mary Kay Independent Beauty Consultant can encounter a prospective recruit in many different social settings, many of which are unplanned and spontaneous. It would be virtually impossible for an Independent Beauty Consultant to disclose the required reference information because she would likely not have this specific information immediately available for a particular prospect that she might unexpectedly meet at a social gathering, skin care class, or other event. She would have no way of knowing in advance who the 10 geographically nearest purchasers applicable to such an individual might be, and thus would be unable to comply with this requirement.

Under the proposed Rule, the only alternative to disclosing the ten geographically nearest purchasers would be to provide a complete list of the names and private information of *every* Mary Kay Independent Beauty Consultant. The aggregated database of Mary Kay Independent Beauty Consultants is a highly confidential, proprietary trade secret and is considered one of our most valuable corporate assets. Requiring us to reveal this information in aggregated form is unacceptable as it would compromise this valuable asset, and put our Company and Beauty Consultants at significant risk from others, either competitors, vendors or bad actors (fraudsters) – clearly contrary to the Commission’s intent.

The Company provides other ways that a prospective Independent Beauty Consultant can learn about Mary Kay. Our Company website is a valuable source of information, and can also be the source for individual Consultant contact information. We also offer a toll free telephone number so that someone could locate an Independent Beauty Consultant in their zip code area.

In addition, a prospective Independent Beauty Consultant probably knows more about Mary Kay from conversations with people she already knows than she could obtain from talking with 10 strangers. The overwhelming majority of Independent Beauty Consultants are either part-time or enter the business for a short time period therefore frequent sales force turnover eliminates any benefit to prospective Independent Beauty Consultants under this provision of the Rule. Making this list available would be a significant burden on our Company and our independent sales force members without providing any new, different or better information to a prospective Independent Beauty Consultant.

Furthermore, the potential privacy concerns raised by this requirement are significant. The proposed Rule would require that existing members of the independent sales force be notified that their personal information (including telephone number) “can be disclosed in the future to other buyers.” We believe that this notice alone could have a significant “chilling effect” on the willingness of an individual to engage in direct sales because they would be forced to decide between becoming an Independent Beauty Consultant and being subject to the disclosure of her private information or not becoming an Independent Beauty Consultant in order to protect her privacy. The FTC has rightly noted in other proceedings that “consumers must be given options with respect to whether and how personal

information collected from them may be used.”³ Therefore, the geographic references required by the Proposed Rule seem inconsistent with the Commission’s recent focus on consumer privacy and identity theft issues.

Additionally, we do not believe that the dissemination of this information will be limited to other “buyers.” Direct selling companies would be forced to give this information to anyone who might be interested in selling; the information could then be used for any purpose, including a potential competitor who decides to pursue current sales force members.

We believe the Commission has seriously underestimated the devastating legal, practical, and economic consequences revealing the identities could have on legitimate direct selling businesses.

C. Legal action

Section 437.3(a)(3) of the proposed Rule requires that sellers of business opportunities provide disclosures regarding all legal actions (regardless of outcome) concerning “misrepresentation, fraud, securities law violations, or unfair or deceptive practices” from the previous ten years. This disclosure would include civil court cases and arbitrations, all governmental actions including criminal matters and administrative law actions, as well as cease and desist orders or assurances of voluntary compliance. The legal action requirement in the NPRM is overly broad and does not provide potential recruits with specific information that would be helpful in that it goes well beyond the scope of concluded litigation applicable to the sale of the business opportunity.

The requirement that direct sellers create, monitor, maintain, update and then make available, a report on such a broad scope of litigation would be an impracticable and virtually impossible burden. The proposed Rule would require disclosure of litigation potentially unrelated to the business opportunity transaction, as well as litigation that was favorably resolved for a legitimate direct selling company, settled, or otherwise completed in such a way as to be irrelevant to the recipient of the report.

For example, many legitimate commercial enterprises today face the challenge of frequent litigation. These legal actions might involve claims of misrepresentation, yet have no relevance to the purchase or sale of a business opportunity. When there is litigation between corporations over an intellectual property matter, a litigant might allege misrepresentation; that lawsuit (and others like it) would have to be reported under the proposed Rule.

Additionally, the proposed Rule as currently drafted is unclear in its scope. A direct selling company, if covered by the rule, might be obligated to report not only litigation involving the company itself, but also litigation involving any member of its

³ Online Profiling: A Report to Congress, Part 2: Recommendations, July 2000. <http://www.ftc.gov/os/2000/07/onlineprofiling.htm>

independent contractor sales force. If thus interpreted, the proposed Rule would create a truly unmanageable burden with regard to this disclosure alone, in that a company would be forced to track such litigation over a ten-year period, maintain a database of that docket, and distribute the information. With a sales force over 700,000 individuals, a large number of which are new each year, the burden of effectively complying with such requirements would be virtually impossible. Meanwhile, a majority of the litigation information collected for such purposes would likely be completely unrelated to the business opportunity and not dispositive to the decision-making process of the prospective Independent Beauty Consultant.

D. Record keeping/Compliance burden

The Commission asserts that the proposed Rule would "reduce the burden on business opportunity sellers by streamlining disclosure requirements to minimize compliance costs." Sec. H - Paperwork Reduction Act, p 19080. We believe the Commission has grossly underestimated the impact the proposed Rule will have on direct sellers - and adding this new compliance obligation will not minimize costs, but in fact will substantially increase costs to our Company and our Independent Beauty Consultants.

The proposed record keeping requirement for the Independent Beauty Consultant and the Company is an overwhelming burden.⁴ Our experience shows that an Independent Beauty Consultant meets with a minimum of five prospects before recruiting one. Based on a conservative rate of sales force recruiting and turnover, we have 40,000 new Independent Beauty Consultants each month, with a total of 2.4 million disclosure opportunities each year. We conservatively calculate that the required disclosure documents for Mary Kay would consist of a minimum of 4 pages of information. Therefore, this proposed Rule requires our Independent Beauty Consultants, many of which work their business only on a very part time basis, to maintain an aggregate of almost 10 million documents in their files each year, or 30 million documents for the required three-year retention period. This is an overwhelming burden and changes the Independent Beauty Consultant's role from independent entrepreneur to keeper of papers and files.

Furthermore, if Mary Kay maintains a duplicate set of disclosure records, 60 million new records would be on file at any given time. Compliance with this overwhelming record keeping requirement in its present form is estimated to require Mary Kay to dramatically change well-established business processes and incur at a minimum between \$300,000 and \$500,000 per year in additional expenses for additional employees, software and training.

Even if the disclosure information was available electronically, our Independent Beauty Consultants and our Company would be expected, in fact required, to maintain sufficient records to demonstrate that the presale disclosure occurred given that the NPRM requires the disclosure to be presented to the prospect. We expect that there will be significant manual and technical process changes incurred

⁴ NPRM § 437.6.

because of the record keeping requirements. The mechanics of this specific requirement could be staggering – and in our view do not assist the Commission in prosecuting perpetrators of fraudulent activity.

E. Earnings claims

Section 437.4 of the proposed Rule states that no earnings claim may be made without detailed, specific disclosures covering a wide range of issues. The proposed language is sweeping, incorporating very precise, orchestrated disclosures without providing any real consumer protections. Therefore, fraudulent actors will not comply with its specificity, while legitimate actors will be forced to give very cumbersome disclosures when current law and the DSA Code of Ethics should have sufficed. The proposed earnings claim requirement is not as strong a deterrent to fraudulent activities as appropriate government enforcement action against unfair or deceptive earnings claims and therefore is unnecessary to this proposed Rule.

IV. Conclusion

The proposed Rule is too broad, too unwieldy and too overreaching – it would have a devastating impact on well-established businesses such as Mary Kay that provide avenues for personal growth and development, and would not achieve the desired consumer protection impact the Commission seeks.

For over 40 years the safeguards built into our business for consumers and Independent Beauty Consultants have worked. Mary Kay's consumer protection safeguards include: 100 percent Satisfaction Guarantee (added by DH); 100 percent buy back guarantee of the Starter Kit within 30 days of signing the sales Agreement; 90 percent buy back guarantee of inventory purchased within a year for all Independent Beauty Consultants, nominal investment into the Starter Kit and no requirement to purchase inventory, and no "non-competition" clauses in the simple, one-page Agreement. Furthermore, Independent Beauty Consultants are paid based upon the purchase or sale of Mary Kay® products, they are not paid on the basis solely of recruiting. Independent Beauty Consultants are independent contractors, free to conduct their Mary Kay businesses as they see fit. Mary Kay is a member of the DSA, a not for profit trade association recognized under the Internal Revenue Code, Sec. 501(c)(6), which requires as a condition of membership compliance with a Code of Ethics that prohibits deceptive practices, fraud or misrepresentation regarding sale or recruitment practices. These safeguards have provided substantial and meaningful protection from financial loss for the millions of Independent Beauty Consultants who have used and sold Mary Kay® products.

To the extent companies have adopted similar consumer protection standards, the proposed Rule might actually cause more consumer damage than benefits. The detrimental impact will be felt both by Mary Kay because of the overwhelming administrative burden it creates, as well as by our Independent Beauty Consultants, who will have significantly increased administrative and disclosure obligations while at the same time suffering from potential increased risk of privacy intrusions.

In our view there is no compelling evidence that the proposed Rule would benefit our business in any way – in fact, the NPRM would have an extremely damaging impact on our Company, our Independent Beauty Consultants, and the sterling reputation for ethics and integrity that is the legacy of our founder, Mary Kay Ash.

For these reasons we ask the Commission to reconsider the promulgation of this Rule and we look forward to participating in any forum available to address constructively ~~these~~ issues and our concerns.

Very truly yours,

Nathan P. Moore
Senior Vice President, General Counsel and Secretary
Mary Kay Inc.

MARY KAY®

ATTACHMENT A

MARY KAY INC. Company Milestones

- 1963 On Friday, September 13, Mary Kay Ash establishes Mary Kay Cosmetics – a “dream” company which she envisions will offer women unprecedented opportunities for financial independence, advancement and personal fulfillment. Mary Kay opens a 500-square-foot storefront in Dallas with the help of her 20-year-old son Richard Rogers, her life savings of \$5,000 and nine Independent Beauty Consultants.
- 1969 Mary Kay awards the use of the first pink Cadillacs to the top-five Independent Sales Directors.
- Construction begins on the Mary Kay Dallas manufacturing facility. Today, it is one of the largest cosmetics manufacturing facilities in the Southwest, measuring the size of approximately three football fields.
- 1971 First international subsidiary opens in Australia.
- 1973 On the company's 10-year anniversary, the Mary Kay Independent Beauty Consultants' count totals more than 21,000.
- 1980 In addition to Australia, Mary Kay's international markets now include Canada and Argentina.
- 1983 Mary Kay Cosmetics celebrates its 20th anniversary; wholesale sales exceed \$300 million.
- The Mary Kay Independent Beauty Consultant count totals nearly 195,000.
- 1984 The first edition of *The 100 Best Companies to Work for in America* book features Mary Kay Inc.
- 1990 Mary Kay now operates in 10 markets worldwide.
- 1991 Wholesale sales reach the \$500 million mark.
- 1993 Mary Kay Inc. debuts on list of *Fortune* 500 companies for 1992.
- For the second time, *The 100 Best Companies to Work for in America* recognizes Mary Kay Inc., and the Company is one of only 55 to appear in both editions.
- Wholesale sales surpass \$735 million and the Mary Kay independent sales force numbers more than 340,000.
- For the second time, the *Fortune* 500 lists Mary Kay Inc., which moves up 57 positions.
- 1994 Wholesale sales reach \$850 million.
- 1995 Ninth consecutive year of record sales; wholesale sales surpass \$900 million.
- Fortune* lists Mary Kay Inc. among the Most Admired Corporations in America.
- 1996 10th consecutive year of record sales; wholesale sales surpass \$1 billion.

Mary Kay Inc. receives "Corporations That Make a Difference Award" from the International Women's Forum for its leadership initiatives in supporting the advancement of women.

Mary Kay Inc. is one of 20 company profiles in the book, *Forbes Greatest Business Stories of All Time*, and Mary Kay Ash is the only woman profiled in the book.

- 1998 For the third time, Mary Kay Inc. is included in *The 100 Best Companies to Work for in America* published by *Fortune* magazine.

Mary Kay Inc. is one of 14 companies, and one of the most prominently featured, in *Good Company: Caring as Fiercely as You Compete*. The book highlights many of the principles and practices that have resulted in Mary Kay Inc. being named one of *The 100 Best Companies to Work for in America*.

- 1999 Mary Kay Ash is recognized as a Texas Woman of the Century – one of the 100 most influential women in the state.

- 2000 Lifetime Television names Mary Kay Ash the most outstanding woman in business in the 20th century based on year-long, online voting in 1999.

Interactive Week names Mary Kay Inc. as the fourth-largest company in the world for online sales in the retail sector in its annual "Interactive 500" listing.

- 2001 Mary Kay Inc. is awarded the Direct Selling Association's "Industry Innovation Award" for the Mary Kay[®] Personal Web Site program, which provides each Independent Beauty Consultant with the opportunity to have a Web site of her own. This award recognizes the company that has developed a pioneering approach to an aspect of direct selling.

Beloved founder Mary Kay Ash passes away November 22, Thanksgiving Day.

- 2002 Another year of record sales; wholesale sales reach nearly \$1.6 billion and the Mary Kay independent sales force numbers more than 950,000.

- 2002 Mary Kay Ash is named a 2002 Dallas Business Hall of Fame Laureate and is inducted to The Academy of Achievement of Sales and Marketing Executives.

- 2003 The Mary Kay independent sales force numbers more than 1 million.

Mary Kay Ash named the Greatest Female Entrepreneur in American History in an academic study led by Baylor University.

- 2004 The Mary Kay independent sales force exceeds 1.3 million in more than 30 markets worldwide.

Mary Kay Ash named one of the "25 Most Influential Business Persons of the Past 25 Years" by PBS's *Nightly Business Report* in conjunction with the Wharton School of Business.

Another year of record sales; wholesale sales surpass \$1.8 billion.

- 2005 The Mary Kay independent sales force exceeds 1.6 million and wholesale sales reach \$2 billion.

Mary Kay Inc. was recognized as one of the "2005 North Texas' Best Workplaces for Commuters."

- 2006 Mary Kay Inc. is awarded three prestigious awards by the Direct Selling Association. For the second time, Mary Kay wins the DSA's "Vision for Tomorrow Award" for its community outreach regarding the prevention of violence against women. The Company also earns the "Education for Life Award" for its investment in independent sales force education and the "Success Award" for its 2005 *Fall In Love* advertising campaign.

EXHIBIT 7

2

MARY KAY

LEGAL DEPT.
DEC 29 2004

Robin Blackmon Dunda
Independent Elite Executive Senior Sales Director
3901 Pebblebrook Lane
Bedford, TX 76021-3116

Dear Robin:

The attached information has been forwarded to Legal Resources for review and response. Based upon the attached information, it appears that you are promoting cruise/travel vouchers to the sales force and to others in conjunction with your Mary Kay business via your unit net site. Also, after we spoke I had two more issues brought to my attention both claiming you were recently promoting cruise/travel vouchers on a conference call with another group of Directors and also at your first and third week of the month meetings with local Consultants.

Please note that by continuing to promote cruise or travel vouchers in any manner, you are considered to be in violation of your agreements with the Company. Specifically, Section 8.6 of your Independent Sales Director Agreement states:

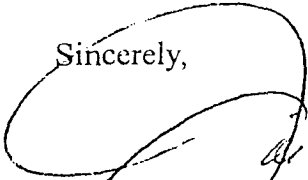
8.6 *"For so long as Sales Director is authorized to use the name "MARY KAY" in connection with the sale of any products under the terms of this Agreement, Sales Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Sales Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.*

Robin, in addition to the contractual issues described above, there are several practical reasons why we strongly recommend against offering trip vouchers and/or cruise vouchers of any kind.

Accordingly, to avoid the pitfalls and to avoid further violations of your agreement with the Company, we ask that you immediately discontinue promoting or giving away cruise/travel vouchers in any way.

Thank you in advance for your understanding and cooperation. Please contact the legal department if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Wedding", is written over the word "Sincerely," and extends down into the name block.

Jill Wedding
Director of Sales Development
Sapphire Division

CC: Laura Beitler

EXHIBIT 8

Laura M. Bester
Staff Attorney, Global Legal Resources

3

MARY KAY

January 27, 2005

Ms. Robin Blackmon-Dunda
Independent Sales Director
3901 Pebblebrook Lane
Bedford, Texas 76021-3116

Dear Robin:

Per your recent conversation with Jill Wedding, it has come to our attention that you have been involved with the sale, promotion and/or distribution of a DVD and CD you created to members of the independent sales force.

Please note that by continuing to promote, distribute or sell the items described above, you are considered to be in violation of your agreements with the Company. Specifically, Section 8.6 of your Independent Sales Director Agreement states:

8.6 *"For so long as Sales Director is authorized to use the name "MARY KAY" in connection with the sale of any products under the terms of this Agreement, Sales Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Sales Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.*

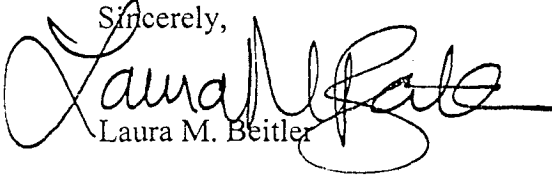
Accordingly, to avoid further violations of your agreement with the Company, we ask that you immediately discontinue the activities described above.

Robin, as you continue working towards your goal of becoming a National Sales Director, it is important to remember that you must be in good standing with the Company before you will be considered for entrance into the NIQ program. We look forward to your cooperation in this regard.

Mary Kay Inc.
3901 Pebblebrook Lane
Bedford, TX 76021-3116
714-487-1471
www.marykay.com

Please don't hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura M. Beitler". The signature is fluid and cursive, with the first name "Laura" being the most prominent part.

Laura M. Beitler

cc: Jo Ann Blackmon, Independent Executive Senior Sales Director
Jill Wedding, Director of Sales Development

EXHIBIT 9

①

November 20, 1995

Ms. Robin Blackmon-Dunda
Independent Senior Sales Director
2403 L Don Dodson Dr. #2001
Bedford, TX #2001

Dear Robin:

The attached newsletter distributed by A.S.K., Inc. has been forwarded to Global Legal Resources for review and response.

In reviewing this information, we discovered your endorsement of this organization, it's speaker and their published material. Because you may not be aware that this organization is utilizing you to endorse their products and services to the Mary Kay sales organization, we wanted to bring this to your attention.

Please understand that Section 8.6 of the Sales Director Agreement states:

“For so long as Director is authorized to use the name “MARY KAY” in connection with the sale of any products under the terms of this Agreement, Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company’s prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.”

Accordingly, we ask that you contact this organization and request that they discontinue your endorsement of their organization and the products and services they offer in their advertisements to the Mary Kay sales organization.

Robin Blackmon-Dunda
November 20, 1995
Page Two

Robin, we appreciate your understanding and cooperation. Should you have any questions, please contact us.

Sincerely,

Nancy D. Abouafia
Legal Coordinator

NDA/amj

cc: Jo Ann Blackmon
Dalene White, Executive National Sales Director
Erin Kilton, Sales Development

EXHIBIT 10

Hello to the most wonderful women I know!

Is it just me or is time flying by?! We will be sitting at Seminar before we know it!

I want to let you know about something that I am really excited about...Creating our own training DVD! This is something that I have wanted to do for quite some time.

Here is what I propose... we do a "The View" type format. We all sit around a conference table and we candidly discuss what it really takes to be great in this business. We will primarily use this for educating our new consultants but I feel that any consultant will benefit. I intend to make the DVD available to my entire unit.

I want to discuss topics like ...Attitude, MK Image, Attending weekly meetings, How to work with your director, The benefits of a full inventory, the PCP program etc. I would love to hear your ideas and topic suggestions.

As we prepare to MASSIVELY grow the numbers in our units we need tools that will help us to educate our consultants in a timely manner. People are busy, we are busy. This DVD eliminates another training and they will be able to watch it over and over again! Why not use technology to duplicate ourselves? Let's also face the fact that we are all destined to have unit members who do not live near us and we will not have the chance to train them face to face. This DVD will help our consultants to get to know us as well as get some great foundational training.

The finished product will be 45 mins. of our round table discussion and then 4/ 10-12 min. segments on Booking, Coaching, Rec and I am not sure on the 4th segment. The 4 segments will be taught by individual directors.

The entire DVD will run 1.5 hours in length. The finished product will be professional with music etc..

Here's the Big Ol' Deal...

We will shoot Thurs. March 17 at our office.
9:30 rehearsal 11:00 roll em

We will have a phone rehearsal/discussion on Sunday 3/13 at 9:00pm

I want us to all wear a nice suit for the taping.

We have a max of 3 hours of cameraman time. I don't think it will take that long. But we need to be prepared to stay until 2pm.

The cost to produce the DVD is approx \$1400. I am going to ask every Director who participates to split the cost with me. I will pay 1/2 (\$700) and the number of Directors who participate will split the other \$700. This is an approx cost it could be less.

You can purchase the finished product for \$5.40 a DVD. Each director will sell them to her unit. You will keep the \$4.60 profit for yourself.
22 DVD's is \$100 in profit to you. That will cover the money you put up to help make the production.

I am going to offer the DVD FREE to a new consultant if she starts with \$600+ initial order. Everyone else will pay \$10 for it. I will also offer it to my entire unit for FREE with a \$600+ order in April.

So I need to know TODAY if you are committed.

I know that Junanne Mosley is flying in from Midland to participate. Thank you Junanne!

This is going to be the start of great things for us.

I love and believe in you,

Robin

Robin Blackmon-Dunda
Leading the #1 unit
NSD 2005
www.marykay.com/robindunda
unit Website: www.unitnet.com/rdunda
email: robindunda@marykay.com

EXHIBIT 11 .

Gina Henebury
2506 Lomo Alto Ct.
Granbury, TX 76048
(817)545-5794
mummyof3@marykay.com

To Whom It May Concern,

After returning from my very first Seminar attendance, I felt compelled to correspond with MK Corporate immediately. I have been a consultant since Oct. 2003, and am proud to be a member of The Winners Circle unit, excellently run by our Elite Exec. Senior Sales Director Robin Blackmon-Dunda.

Our unit has an incredible team spirit, and after breaking records within our National Area during Seminar Year 2004, we have rallied together all year long, working towards our goal of being #1 in the Sapphire Seminar 2005.

Since I was unable to attend last year's Seminar, due to the birth of my 3rd child two weeks prior, I was especially looking forward to this Seminar. Despite the demands of raising 3 preschoolers, busy pastor/professor husband, one car, buying our first house and my mother's mental breakdown, I was glad to diligently work my Mary Kay business, keeping our unit's goal in sight along the way. During this first year as a Consultant, I built my customer base, recruited team members and learned to do business the Mary Kay way – all under the excellent training and personal help of Robin Blackmon-Dunda.

Naturally, these last few weeks have been so exciting for me and the fellow consultants in my unit. The goal for which we had worked all year long was nearly completed! At our Unit Awards Dinner, July 19th, I was pleased to find that I had achieved #1 in Recruiting and #4 in Sales out of the more than 350 consultants in our unit. Many of my fellow unit members had gathered in Dallas and we were thrilled to celebrate our success at Seminar – together!

The excitement of sitting on the first row in the Arena, and participating when our very own Director was recognized as the #1 Sales Director in the Sapphire Seminar was unreal. To see what we had worked towards actually happen on stage was like a dream – come true!

But sadly, during the final general session of Seminar Day 3, I was confused and dismayed when I realized that we were being suddenly dismissed after hearing the inspiring speeches of the #2 and the #3 Sapphire Sales Directors, and my own #1 Director was completely cut out of the program. Instead of leaving the Arena elated – ready to return and give my business a renewed effort – I left feeling deflated and somehow

humiliated. My fellow unit members and I were dazed and very confused, and many of us were in tears. Over and over again, as we left the Dallas Convention Center -- and the hotel! -- each of us were approached by consultants from other units, asking why Robin had not given a speech, and reiterating that they had been looking forward to her speech in particular throughout the entire program.

Do you realize that you have publicly humiliated a Sales Director who is one of the most loyal and dedicated of the sales force and leadership in Mary Kay? One who at age 7, had memorized Mary Kay Ash's own "correct booking approach" after hearing her mother (NSD Jo Ann Blackmon) play her training records repeatedly, as recommended! Robin grew up in a household that adopted the principles that Mary Kay Ash personally taught her Directors, and even at a young age, her own mother was her inspiration to achieve all that the Mary Kay opportunity offers.

As one of her top 5 unit members in both production and recruiting, I am shocked and disillusioned by Mary Kay Corporate. Surely this is not how you honor a Top Director. If you only knew how tirelessly and faithfully Robin teaches her consultants to stick to the principles and methods that Mary Kay Ash herself founded the company upon! She is entirely selfless in the way she pours herself into the lives of consultants in her unit -- both young and old, novice and experienced. Robin is not one to count the cost if someone "flakes out" that she has personally helped. Her only joy is helping others to succeed, her only motivation to motivate others to change their circumstances and lives by taking advantage of the opportunity that Mary Kay makes available to women today.

As a Future Director with 14 personal recruits, I was actually amused during the specific training for Red Jackets. Most of the Sales Directors who taught had clearly *not* mastered the skills that Mary Kay Ash set out, most of which can be found in the Learn MK section of our websites. I was frankly disappointed at the methods taught during one Seminar class in particular on "Individual Closing", since it was definitely not the Mary Kay way, and would only prove to frustrate the consultants who chose to adopt it by resulting in poor sales, minimal bookings, and no probable recruits. Simple yet crucial aspects such as individual closing are repeatedly taught, demonstrated and outlined for us by Robin Blackmon-Dunda and her offspring Directors at our weekly Success Meetings. And although I live more than an hour away, I willingly drive the 60 miles to these weekly meetings, since I am confident that I will continue to get the training that I need to help me succeed week after week after week.

In closing, I would appreciate a response to my concerns. Please know that I am and will always be proud to be a Mary Kay consultant. And I thank God that He placed me in one of the Top 3 units in the country. I will never be able to forget the humiliation that Mary Kay, Inc. inflicted on my #1 Director and her entire unit at my first Seminar by not allowing her the privilege of sharing her story and ever-motivating words of wisdom. However, I know her personally, and am confident that she possesses the deepness of character to endure the slander which has obviously occurred, and that she will remain committed to guiding her #1 unit to the top again in Seminar 2006. And I will remain committed to my business, regardless of the great mistake that I feel has been made in

this decision against my Director. My fellow unit members and I will again be achieving great things this year and are already busy making miracles a reality in our exceptional unit.

See you on stage at Seminar 2006.

Sincerely yours,

Gina L. Henebury
HZ 1600

EXHIBIT 12

May 26, 2005

Mr. Gary Jinks
16251 Dallas Parkway
P.O. Box 799045
Dallas, TX 75379-9045

Dear Gary,

I first want to express my gratitude to you for the courtesy that you extended to me during our meeting back in April. I know that Mary Kay would appreciate the dignity and warmth with which I was treated.

As you can probably imagine, I never in a-million-years thought I would be involved in a meeting such as we had. I absolutely love and cherish my Mary Kay career I would never consciously do anything to put myself in the kind of jeopardy that I am finding myself in now.

I want you to know that I now fully understand what the company expects of me. As I stated during the meeting, I am whole heartedly willing and eager to be in 100% compliance with all that you have requested. I am determined to re-establish and maintain a healthy and trustworthy reputation with the corporate office.

I understand and accept the consequences and the probationary terms that I am currently subject to. However, I am writing to implore you to reconsider one part of my punishment, the Day Three 10 minute talk.

This Seminar year has been one of excitement and anticipation for me as well as my unit. We have dreamed and visualized every moment of the upcoming 2005 Seminar as Mary Kay herself has encouraged us to. We are focused and excited about being the #1 unit in our Seminar!

I am committed to moving on to a positive interaction with the corporate staff and I am certain from your comments that you are too. I sincerely believe however, that if I am noticeably absent as a speaker at Seminar it will cause a whirlwind of conversation and questions. As I stated earlier, I am anxious to move on to a better place.

I am begging you to allow me to have those brief yet important moments to publicly thank and acknowledge my Mom and Dad, my husband, my children and my unit. I feel that the above mentioned people deserve to be spotlighted for their incredible contribution to me and our company. I especially am asking on behalf of my unit. They are worthy of recognition and I have dreamed for the last 18 years for this chance to praise them in this historic and traditional way.

I know that I have had an excellent reputation for the last 18 years. I have made many excellent decisions which have brought me to this wonderful place as a Million Dollar Director! I feel that the opportunity to speak *this year* is not just for the efforts we have put forth recently but for ALL that it has taken to build a TOP Unit over the years. I sincerely hope that my current error in judgment will not over shadow a superlative career that spans almost 2 decades.

I am afraid that others would not understand why I am under such a penalty. I do not want to burst the "Pink Bubble" that my consultants currently enjoy. I am certain that if I do not speak on Day 3 it will cause more harm and misunderstanding than I am prepared to handle.

I pride myself in maintaining an absolute honesty policy in regards to any issue in my life. When we met you asked me to not speak of this situation, to move on from here. I have done that. If I am confronted and asked why I am obviously omitted I will be bound by my personal integrity to tell the truth.

Gary, I am pleading to you with every ounce of my heart for enough mercy and forgiveness to allow me as is tradition to have the chance to properly honor those who have honored me.

Thank you, thank you for your consideration. I anxiously await your response.

Respectfully,

Robin Blackmon-Dunda
Elite Executive Senior Sales Director

cc: David Holl
Nathan Moore
Jo Ann Blackmon

EXHIBIT 13

Laura M. Dettler
Senior Attorney, Legal Resources

MARY KAY

August 14, 2006

Ms. Robin Blackmon-Dunda
Independent Executive Senior Sales Director
3901 Pebblebrook Lane
Bedford, Texas 76021-3116

Dear Robin:

It has come to our attention that you have been involved with the sale, promotion and/or distribution of a hostess apron as well as an instructional DVD you created to members of the independent sales force. Further, it has also come to our attention that you have promoted the lending services offered by www.prosper.com and www.utopia.com through a group you created called "Pink Utopia" to the independent sales force. The activities described above can create confusion in the minds of consumers as to Mary Kay Inc.'s affiliation with such products and/or services.

As you know, Sections 8.6 and 8.10 of your Independent Sales Director Agreement state:

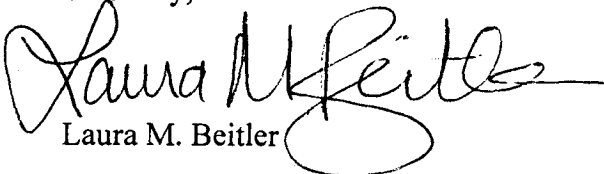
- 8.6 ***"For so long as Sales Director is authorized to use the name "MARY KAY" in connection with the sale of any products under the terms of this Agreement, Sales Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Sales Director further agrees not to promote, distribute or sell to anyone any products which are not produced, sold and/or distributed by the Company in a manner which would falsely designate or suggest, or would be likely to suggest or indicate such products as originating with, or endorsed by the Company.***
- 8.10 ***"In consideration of the commission compensation provided under this Agreement and the other rights and benefits provided hereunder, Sales Director agrees to continuously and faithfully employ Sales Director's best efforts to promote the sale of Mary Kay products in the United States market during the period this Agreement is in effect. Sales Director further agrees not to engage, directly or indirectly in soliciting or recruiting Mary Kay Beauty Consultants or Mary Kay Sales Directors to sell products or services other than those sold by Company during the period this Agreement is in effect and for a period of two (2) years after its termination. Sales Director further agrees not to utilize, or knowingly permit any other person to utilize, any names, mailing lists or other non-public business information which Sales Director obtains***

Mary Kay Inc.
P.O. Box 299045
Dallas, TX 75379-9045
972-687-5771
Fax 972-687-1604
www.marykay.com

during Sales Director's association with Company for recruiting or for promotion of the sale of any other company's products in the United States during the period that this Agreement is in effect and for a period of two (2) years after its termination. Sales Director further agrees during the period of Sales Director's business relationship with Company as a Sales Director and for a period of two (2) years following date of any termination of such status for any reason, that Sales Director will refrain from directly or indirectly soliciting or inducing any Sales Director or Beauty Consultant to terminate their business relationships with Company whether, such solicitation or inducement be for Sales Director's own account or that of others. Sales Director further expressly agrees to refrain, during the period of Sales Director's relationship with Company as a Sales Director and for a period of two (2) years following the date of any termination of such status, from seeking, receiving or accepting, directly or indirectly, any fee, commission, override commission, financial benefit, contract right, monetary or non-monetary reward or other form of compensation from another company or business organization based on or associated with the solicitation, recruitment, enrollment or association by employment, contract or otherwise for such company or business organization of any person whom Sales Director knows or has reason to believe is then under contract as a member of the Mary Kay independent sales organization. Sales Director agrees that Company may have, in addition to any other remedies available at law, an injunction restraining Sales Director from any violation of the terms of this Section 8.10, and that a temporary restraining order may be issued, without prior notice to Sales Director, upon sworn application therefore being made by Company setting forth the facts constituting any such alleged violation."

Accordingly, we ask that you immediately discontinue the activities described above. We look forward to your cooperation with this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura M. Beitler". The signature is fluid and cursive, with a large loop at the end.

Laura M. Beitler

cc: Jo Ann Blackmon, Independent National Sales Director
Heather Hines, Sales Development

EXHIBIT 14

Darrell Overcash
President, U.S.

MARY KAY

August 29, 2006

Dear Independent National Sales Director,

Some of you have contacted us recently concerning how to respond when the Company makes a decision affecting an independent sales force member's contractual relationship with the Company. We sincerely appreciate your heartfelt concerns and comments. We also hope you know how important it is that we endeavor to protect the individual's privacy; therefore, we are reluctant to disclose details of a specific situation. However, I do believe it is important to provide you with helpful information when sales force members within your National Area approach you with questions.

Our goal is to help everyone build and maintain trust and confidence in this business. Whether it's the individual or the Company that ends the relationship, we hope that the details of the situation would be considered as a private matter between the two parties. In situations where the Company ends a relationship, I can promise you that we never take a decision like that lightly. Generally it is only after repeated unsuccessful attempts to help someone understand she is doing something wrong, do we ever get to the point where the Company feels we need to terminate a relationship.

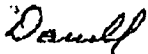
When it comes to situations regarding contractual violations, we want to give every sales force member an opportunity to learn and become better and stronger. We strive to work with each sales force member to educate them, test for understanding, and offer opportunities to correct the situation. Further, we strongly urge discussion with the Company for clarification of their responsibilities before action is taken.

Once a final decision is made, it is important to turn our attention to the other Independent Beauty Consultants, Sales Directors, and National Sales Directors that continue to work their Mary Kay business and remain focused on reaching their goals. What we all do and say will determine how well and how quickly everyone moves forward. Your positive support and confidence are vital to ensure the Mary Kay opportunity will remain as strong as ever. As Mary Kay said, "It's not so much what happens to us as how we react to what happens that makes the difference."

We count on you to trust and respect our decisions knowing that our goal is to always act in the best interest of Mary Kay as a whole. At the same time, I encourage you to try to be understanding of the feelings of others who may be struggling with a decision. And of course, anytime questions arise that you feel you can't answer, please share that we are available to answer questions for any sales force member regarding their personal business practices.

As always, please don't hesitate to call if you have questions.

Thank you for your love and support,



Darrell Overcash
President, U.S.

DO:ph