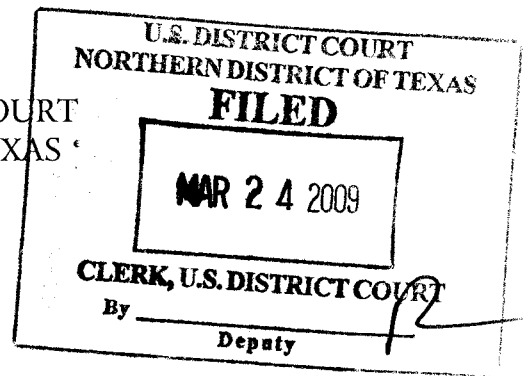


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



MARY KAY INC.,

Plaintiff,

VS.

AMY L. WEBER, ET AL.,

Defendants.

)
)
)
)
)
)
)
)
)
)

CIVIL ACTION NO.

3:08-CV-0776-G

ECF

COURT'S INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all of the evidence and the arguments of counsel, it becomes my duty to give you the instructions of the court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law

stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in these instructions, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

All Parties Entitled to Equal Consideration

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated in these instructions, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. The law is no respecter of persons, and all parties stand equal before the law and are to be dealt with as equals in a court of justice.

Evidence, Objections, Statements of Counsel

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence"

includes the sworn testimony of the witnesses, the exhibits admitted in the record, and stipulated facts. Stipulated facts must be regarded as proven facts.

During the course of the trial you heard objections to evidence. It is the duty of the lawyer on each side of a case to object when the other side offers testimony or other evidence which the lawyer believes is not properly admissible under the rules of evidence. You should not draw any inferences against a lawyer or the party he or she represents because of the making of an objection. When I overrule an objection and allow testimony or other evidence to be introduced over the objections of a lawyer, I am not indicating any opinion as to the weight or effect of such evidence. You should consider it as you would any other evidence. On the other hand, any evidence to which an objection was sustained, and any evidence ordered stricken by the court, must be disregarded.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. If a lawyer has asked a witness a question that contains an assertion of fact, you must not consider the assertion as evidence of that fact unless the witness has affirmed or adopted it by his or her answer. The lawyer's statements are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your

notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case.

You are not bound by any opinion which you might think I have concerning the facts of this case, and if I have in any way said or done anything which leads you to believe that I have any opinion about the facts in this case, you are instructed to disregard it. Further, nothing in these instructions to you is made for the purpose of suggesting or conveying to you any intimation as to what verdict I think you should find.

Although you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts established by the evidence in the case.

Direct or Circumstantial Evidence

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by witnesses who saw the act done or heard the words spoken or by documentary evidence. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Direct proof of a state of mind is almost never available and is not required. Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, it is the burden of the plaintiff to prove, by a preponderance of the evidence, all elements of its claims. If the proof should fail to establish, by a preponderance of the evidence, any essential element of one of the plaintiff's claims, you should find for the defendant as to that claim.

Preponderance of the Evidence

The burden is on the plaintiff in a civil action such as this to prove every essential element of its claims by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Credibility of Witnesses

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to that witness’s testimony. In weighing the testimony of a witness, you should consider the witness’s relationship to the plaintiff or to the defendants; the witness’s interest, if any, in the outcome of the case; the witness’s manner of testifying; the witness’s opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness’s candor, fairness, and intelligence; and the extent to which the witness’s testimony has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness, in whole or in part.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

A witness may be discredited or “impeached” by contradictory evidence, by a showing that the witness testified falsely concerning an important matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the witness’s present testimony. If you believe that any witness has been so impeached, it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

Deposition Testimony

Certain testimony has been presented to you through depositions. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness’ testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this

case questioned witnesses under oath. A court reporter was present and recorded the testimony. The questions and answers were shown to you during the course of the trial. Deposition testimony is entitled to the same consideration and is to be judged by you as to credibility, insofar as possible, in the same manner as if the witness had been present and had testified from the witness stand in court.

Nature of the Case

This case is a civil action for unfair competition, passing off, and trademark infringement. The parties in this case are the plaintiff, Mary Kay Inc. ("Mary Kay" or "the plaintiff") and the defendants, Amy Weber, Scott Weber and Touch of Pink Cosmetics ("the defendants"). The defendants sell Mary Kay products over the internet. Mary Kay now sues, arguing that the defendants have infringed on the Mary Kay trademark, passed themselves off as Mary Kay, and unfairly competed with Mary Kay. Specifically, Mary Kay argues that the defendants used the Mary Kay trademark in a way that led the public to believe the defendants were sponsored by or affiliated with Mary Kay.

Contentions of the Parties

1. Plaintiff's Claims

Mary Kay argues that the defendants have infringed on the Mary Kay trademark by using it in a way that implies the defendants are affiliated with or sponsored by Mary Kay. Mary Kay contends that the defendants engaged in this

conduct deliberately and willfully. As a result, Mary Kay asks that the defendants not be allowed to continue this allegedly improper use of the Mary Kay trademark. Mary Kay also seeks an accounting of defendants' profits.

2. Defendants' Defenses

The defendants argue that their use of the Mary Kay trademark is proper. They argue that the first sale doctrine protects their use of the Mary Kay name. The first sale doctrine protects sellers who sell genuine goods bearing a true mark, even if that sale is without the mark owner's consent. In other words, under the first sale doctrine, the defendants are allowed to sell Mary Kay products without Mary Kay's consent so long as (1) they have not used the Mary Kay mark in a way that suggests sponsorship or endorsement by the trademark holder and (2) they sell genuine Mary Kay goods. Mary Kay, however, argues that the goods the defendants are selling are not genuine Mary Kay products. Mary Kay argues that the defendants sell products that are materially different from those Mary Kay sells and in a manner that suggests sponsorship or endorsement by Mary Kay.

The defendants also argue they are protected by the fair use doctrine. This doctrine allows sellers to truthfully identify another's goods in order to describe or compare its product to the markholder's product. In other words, the defendants argue they have only used the Mary Kay name to inform consumers that the products they sell are made by Mary Kay. In order for the defendants to be protected by the

fair use doctrine, they must show (1) that the Mary Kay products they sell are not readily identifiable without use of the trademark, (2) that they have only used so much of the Mary Kay mark as is reasonably necessary to identify the products, and (3) that they have not done anything that suggests affiliation, sponsorship, or endorsement by Mary Kay. Mary Kay argues that the defendants cannot assert this defense because they have used the Mary Kay mark to do more than merely identify the products, and that defendants have suggested affiliation with or sponsorship by Mary Kay.

The defendants also argue that the defense of laches applies. This defense protects the defendants if the plaintiff delays for too long before bringing its cause of action and the defendants are prejudiced by that delay. Mary Kay argues that defendants cannot assert this defense because it brought this lawsuit in a timely fashion and because the defendants have not suffered any undue prejudice.

Stipulated Facts

The parties have agreed on, or stipulated, the following facts. This means that both sides agree that the above are facts. You must therefore treat these facts as having been proved.

1. Mary Kay is a manufacturer and wholesale distributor of cosmetics, toiletries, skin care, and other related products. Mary Kay's headquarters are in Addison, Texas.

2. Amy and Scott Weber are individuals residing in La Salle, Illinois. Mrs. Weber is the sole proprietor of Touch of Pink Cosmetics.

3. Mary Kay uses the direct sales method to market its products. This means Mary Kay sells its products at wholesale prices, and on a prepaid basis, to the self-employed Independent Beauty Consultants (“IBCs”). The IBCs then offer Mary Kay products to their customers at retail prices. IBCs can make profits from the retail sales of Mary Kay products to their customers.

4. Mary Kay is the owner of five trademarks on the principal register of the U.S. Patent and Trademark Office. These marks are all variations of the name “Mary Kay.”

5. Mary Kay also holds registered trademarks for its individual products and certain product lines, including Timewise and Velocity.

6. Amy Weber signed an IBC agreement with Mary Kay on January 27, 2000.

7. Touch of Pink buys Mary Kay products from former and current Mary Kay IBCs. Touch of Pink resells those products on the Touch of Pink website and on eBay.

8. Defendants’ pre-tax net profit for the years 2005-2008 was \$1,139,962.00.

9. Defendants' after-tax net profit for the years 2005-2008 was \$694,518.00.

Jury Deliberations

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way, you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

As soon as I finish giving these instructions, you will retire to the jury room. In a few minutes, I will send to you the original of this charge and the exhibits that have been admitted into evidence, and photographs of the witnesses who testified at this trial. Do not begin your deliberations until you have received these materials. After you receive these materials from the court, you should select one of your number to act as your foreperson. He or she will preside over your deliberations and will be your spokesperson here in court.

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.


During your deliberations you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long. If during your deliberations you wish to communicate with the court, your message or question must be written down and signed by your foreperson. Pass the note to the court security officer, who will bring it to me. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, that any note you might send must never state or specify your numerical division at that time.

A verdict form has been prepared for your convenience. Answer each question from the facts as you find them. Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

When you have reached unanimous agreement as to your verdict, have your foreperson fill in the verdict form according to the applicable instructions, date and

sign it, and contact the court security officer. Keep the verdict form and do not reveal your verdict until you are instructed to do so by the court.

March 24, 2009.



A. JOE FISH
Senior United States District Judge

This verdict form contains a series of questions together with related instructions and definitions.

Trademark Infringement

Mary Kay argues that the defendants have infringed on the Mary Kay trademarks by selling Mary Kay products in a way that causes confusion among consumers as to whether the defendants are affiliated with or sponsored by Mary Kay. You must determine whether the way the defendants use the Mary Kay trademark -- either in advertising or through their websites -- is likely to cause confusion, mistake, or to deceive a consumer about whether the defendants are sponsored by, or affiliated with Mary Kay.

Unfair Competition

Mary Kay argues that the defendants have used the Mary Kay trademarks in a way that is likely to cause confusion among ordinary purchasers as to whether the defendants are affiliated with or sponsored by Mary Kay. Mary Kay contends that, if this is so, such behavior constitutes unfair competition.

Passing Off

Mary Kay argues the defendants are liable for passing off their goods as Mary Kay's goods. Passing off occurs when a business falsely represents that the goods it sells are those of a competitor. A business engages in passing off when it sells its goods by using words or other symbols that tend to falsely describe or represent the

origin of its products or that its products are those of a competitor. Here, Mary Kay argues the defendants tried to pass themselves off as Mary Kay. To demonstrate that the defendants are liable for passing off, Mary Kay must show, by a preponderance of the evidence, that the defendants subjectively and knowingly intended to confuse buyers. It is not enough that the defendants were merely aware of the plaintiff's claim to the Mary Kay mark. Mary Kay must show that the defendants had the wrongful intent of capitalizing on any goodwill associated with the Mary Kay name.

Likelihood of Confusion

In determining whether the defendants' use of the Mary Kay trademark is likely to cause confusion, you may draw on your common experience as citizens of the community. In addition to the general knowledge you have acquired throughout your lifetimes, you may also consider:

- (1) Identity of the advertising media used -- in other words, consider whether you believe that the defendants intentionally advertised through the same medium as the plaintiff in order to cause confusion.
- (2) Any evidence of actual confusion -- in other words, if individuals have been confused about the defendants' affiliation with Mary Kay in the past, it might persuade you to think that more people will be confused in the future.
- (3) The intent of the defendants in designing www.touchofpinkcosmetics.com and the advertisements for the website. That is,

whether the defendants intended for consumers to be confused about whether Touch of Pink was the Mary Kay website or was approved by, affiliated with, or sponsored by Mary Kay.

In light of these considerations and your common experience, you must determine if ordinary consumers, neither overly careful nor overly careless, would likely be confused as to whether the defendants were affiliated with or sponsored by Mary Kay after viewing the defendants' websites and the advertisements for those websites. No one factor or consideration is conclusive, but each aspect should be weighed in light of the total evidence presented at the trial.

Willfulness

If you find that the defendants infringed on the Mary Kay trademarks, engaged in unfair competition, or passing off, you must consider whether the defendants' conduct was willful. Willful, in this context, means that the defendants acted voluntarily and intentionally and with the specific intent to cause likelihood of consumer confusion, to cause mistake, or to deceive.

The Fair Use Defense

The defendants have argued that the fair use defense protects them from liability. The fair use defense is an affirmative defense, which means the defendants bear the burden to show, by a preponderance of the evidence, that the elements of the fair use defense apply. The elements of the fair use defense are: (1) the Mary

Kay products are not readily identifiable without use of the trademark, (2) the defendants use only so much of the mark as is reasonably necessary to identify the products, and (3) the defendants have done nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by Mary Kay, the trademark holder. Here, the defendants argue that they are not liable for trademark infringement because they use the Mary Kay mark only to inform consumers that they are selling Mary Kay products, and that they do not suggest affiliation with or sponsorship by Mary Kay.

Mary Kay argued, among other things, that by purchasing keywords from search engines such as Google, Yahoo, and MSN, the Webers used Mary Kay trademarks to do more than merely identify or describe the goods they were selling. Mary Kay argued, among other things, that because many of these keywords contained Mary Kay trademarks, the Webers were using the Mary Kay name to “divert traffic” to their website. This purchase of keywords, it argued, amounts to more than merely using the Mary Kay trademark to describe or identify the products. Whatever your assessment of this argument, the court has already ruled in this case that the purchase of keywords from a search engine such as Google, MSN, or Yahoo is not improper. This is true even if the keywords purchased include another’s trademark. Thus, the fact that the Webers purchased keywords such as “Mary Kay”

or “TimeWise” from Google or any other search engine does not prevent the application of the fair use defense.

The First Sale Doctrine

The defendants also argue that they are not liable for trademark infringement, passing off, or unfair competition because the first sale doctrine applies. Under the first sale doctrine, sellers are not liable for selling genuine trademarked goods bearing a true mark, even if the seller does not have the trademark owner’s permission. To avail themselves of this defense, the defendants must show, by a preponderance of the evidence, that (1) they have not used the Mary Kay mark in a way that suggests sponsorship or endorsement by the trademark holder, and (2) that they sell genuine Mary Kay goods.

The Definition of Genuine

In order to avail themselves of the first sale doctrine, the defendants must show, by a preponderance of the evidence, that the goods they sell are genuine Mary Kay goods. The fact that defendants’ products are not sold through Mary Kay consultants does not mean that the defendants’ products are not genuine. A genuine good is one that does not materially differ from those sold by Mary Kay or its independent beauty consultants. Mary Kay argues that the defendants’ products materially differ from Mary Kay’s because the defendants’ goods are past shelf life or past the stated expiration date. If you believe the defendants sell Mary Kay products

that are past shelf life or past the expiration date, you must then determine whether this fact causes the products to be materially different from Mary Kay products offered for sale through Mary Kay's distribution network.

Mary Kay also argues that the defendants' goods materially differ from Mary Kay's goods because they are not accompanied by the Mary Kay satisfaction guarantee. You must decide whether you believe that products sold without the Mary Kay guarantee materially differ from products sold with the Mary Kay guarantee.

Mary Kay also argues that defendants' goods differ materially from Mary Kay goods because defendants do not have the same or similar quality control procedures with respect to the production, storage, and transportation of those goods. You must decide whether you believe that defendants' products are materially different because of any difference in defendants' quality control procedures.

Any Non-Genuine Goods Must Harm the Mary Kay Name

Even if you find that the defendants are selling non-genuine Mary Kay products, you must still determine whether those sales of non-genuine goods diminish the value of the Mary Kay mark. The first sale defense will protect the defendants from liability even if they sell non-genuine Mary Kay products, so long as the defendants' sales of Mary Kay products do not harm the value of the Mary Kay mark. Only consider this issue if you decide that the defendants sell non-genuine Mary Kay products. If you reach the question of whether the defendants' sales of non-genuine

Mary Kay goods harm the value of the Mary Kay mark, consider whether the defendants have caused a sufficient volume of non-genuine products to enter the stream of commerce. For example, you may believe that the defendants have caused such a small amount of non-genuine goods to enter the stream of commerce that it is not possible for such a small amount to have negatively affected the value of the Mary Kay mark. On the other hand, you may believe that the defendants have introduced a large enough number of non-genuine goods into the stream of commerce that the value of the Mary Kay mark will be negatively affected.

Laches

The defendants have argued that the defense of laches applies. In order for laches to apply, the defendants must show, by a preponderance of the evidence, that (1) Mary Kay delayed in asserting their rights, (2) the delay was unexcused, and (3) the defendants were unduly prejudiced by the delay. The period for laches begins when Mary Kay knew or should have known of the defendants' conduct.

Defendants' Profits

If you find that the defendants have infringed on one or more of the Mary Kay trademarks or engaged in unfair competition or passing off, you must determine whether it is appropriate to award Mary Kay the profits earned by the defendants that are attributable to that infringement. To determine whether an award of the defendants' profits is appropriate, you should consider the following factors:

- (1) whether the defendants had the intent to confuse or deceive;
- (2) whether sales have been diverted;
- (3) the adequacy of other remedies;
- (4) any unreasonable delay by the plaintiff in asserting his rights;
- (5) the public interest in making the misconduct unprofitable;
- (6) whether it is a case of passing off.

QUESTION NO. 1:

Has Mary Kay proven by a preponderance of the evidence that defendants infringed one or more of the Mary Kay marks?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

If you answered "Yes" as to one or more of the defendants in Question No. 1, proceed to Question No. 2. Otherwise, proceed to Question No. 3.

QUESTION NO. 2:

Has Mary Kay proven by a preponderance of the evidence that defendants used one or more of the Mary Kay trademarks voluntarily and intentionally and with the specific intent to cause confusion, to cause mistake, or to deceive?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

Proceed to Question No. 3.

QUESTION NO. 3:

Did Mary Kay prove, by a preponderance of the evidence, that the defendants engaged in passing off?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

If you answered "Yes" to Question No. 3, then answer Question No. 4. Otherwise, proceed to Question No. 5.

QUESTION NO. 4:

Has Mary Kay proven by a preponderance of the evidence that defendants engaged in passing off voluntarily and intentionally and with the specific intent to cause confusion, to cause mistake, or to deceive?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

Proceed to Question No. 5.

QUESTION NO. 5:

Did Mary Kay prove, by a preponderance of the evidence, that the defendants engaged in unfair competition?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

If you answered "Yes" to Question No. 5, then answer Question No. 6. Otherwise, proceed to Question No. 7.

QUESTION NO. 6:

Has Mary Kay proven by a preponderance of the evidence that defendants engaged in unfair competition voluntarily and intentionally and with the specific intent to cause confusion, to cause mistake, or to deceive?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

Proceed to Question No. 7.

QUESTION NO. 7:

Defendants have pled the defense of laches. Did the defendants show, by a preponderance of the evidence, that the defense of laches applies?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

Proceed to Question No. 8.

QUESTION NO. 8:

The defendants have pled the defense of the first sale doctrine. Did the defendants show, by a preponderance of the evidence, that the first sale doctrine applies?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

Proceed to Question No. 9.

QUESTION NO. 9:

The defendants pled the defense of the fair use. Did the defendants prove, by a preponderance of the evidence, that the fair use defense applies?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: No

Proceed to Question No. 10 only if you answered "Yes" to any of the following questions: Question No. 1, Question No. 3, or Question No. 5. If you answered "No" to all these questions, proceed to the end and have your foreperson sign the verdict form.

If you answered "Yes" to either Question No. 1, Question No. 3, or Question No. 5, you must now consider whether or not to award to Mary Kay an accounting of the profits defendants derived from either trademark infringement, passing off, or unfair competition - whichever you found the defendants liable for. A finding of liability for any of these causes of action does not require that you grant an accounting of profits. Even though I am instructing you on accounting of profits, this should not be taken to mean that I believe that the defendants are liable for the claims brought or that an accounting is appropriate. These are issues for you to resolve under the instructions I have given you.

QUESTION NO. 10:

Do you find from a preponderance of the evidence that Mary Kay is entitled to an accounting of profits?

INSTRUCTION: Answer "Yes" or "No."

ANSWER: YES

March 24, 2009.

Thomas J. Phillips
FOREPERSON