

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

MARY KAY INC.

Plaintiff,

vs.

AMY DUNLAP

Defendant.

CASE NO.: 3:12-cv-00029-D

**DEFENDANT’S ANSWER AND
COUNTERCLAIM:
COUNT 1--DECEPTIVE TRADE
PRACTICES;
COUNT 2--VIOLATIONS OF
FEDERAL ANTITRUST LAWS;
COUNT 3-- ALTERNATIVE CLAIM
FOR REFORMED AGREEMENT.**

COMES NOW the Defendant and for her Answer and Counterclaim admits,
denies and alleges as follows:

I. GENERAL DENIAL

1. Defendant enters her general denial to the allegations contained in the Original Petition of the Plaintiff Mary Kay Inc. (hereinafter “Mary Kay” or “Plaintiff”) except that she admits she resides in Troy, Missouri.

II. SPECIAL DENIAL

2. Defendant specially denies the allegations contained in paragraph 18 of the Original Petition regarding attorneys’ fees.

III. AFFIRMATIVE DEFENSES

3. Defendant affirmatively alleges that this Court has jurisdiction of this case under the provisions of 28 U.S.C. §§1332, 1441, and 1446 on the following grounds:

a. This Court has diversity jurisdiction over this case because the Plaintiff has its principal place of business in Texas, and

b. Defendant is a citizen of the State of Missouri, where she resides in Troy, Missouri. The amount in controversy exceeds \$75,000.00.

c. Defendant timely filed a Notice of Removal to this Court.

4. Plaintiff is barred from recovery by reason of estoppel, failure of consideration, illegality, ratification and waiver.

5. This case should be transferred to, and venue properly lies in, the District where Defendant resides, the District Court of Missouri, located in St. Louis, Missouri.

6. Plaintiff has failed to state a claim upon which relief can be granted.

7. Plaintiff is barred from recovery herein by reason of its violations of the provisions of §17.46 of the Texas Business and Commerce Code making it

1 unlawful to engage in false, misleading, and deceptive acts and practices in
2 the sales of services, which services are described in Plaintiff's
3 "Independent National Sales Director Agreement," a true and correct copy
4 of which is attached hereto as Exhibit "A," as the sale of an "independent
5 dealer" business opportunity to Defendant, with Defendant as the consumer
6 of said services under § 17.45 of the Texas Business and Commerce Code.
7 Defendant is entitled to an award of reasonable and necessary attorneys'
8 fees and court costs pursuant to the provisions of §17.50(d) of said Code,
9 under § 38.001 of the Texas Civil Practice and Remedies Code, and under
10 applicable law, for being required to defend herself from Plaintiff's attempt
11 to enforce its false, misleading, and deceptive agreement.
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- 17 8. Under the provisions of the Texas Business and Commerce Code adopted in
18 Texas, Mary Kay violated the provisions of § 2.210(b) of the Texas
19 Business & Commerce Code which renders Section 13 of the
20 Independent National Sales Director Agreement ineffective. That
21 statutory provision requires that contractual rights such as are provided for
22 in the National Sales Director Agreement are assignable thereby allowing
23 Defendant Dunlap's business to be assigned or otherwise transferred by gift
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1 or will. Defendant is entitled to an award of reasonable and necessary
2 attorneys' fees and court costs pursuant to the provisions of §17.50(d) for
3 being required to defend herself from Plaintiff's attempt to enforce its false,
4 misleading, and deceptive agreement.
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7 9. Alternatively, if the Court finds that the Agreement attached hereto as
8 Exhibit "A" is not null and void under the defenses set forth above, and that
9 the covenant not to compete contained in it is ancillary to an otherwise
10 enforceable agreement, the provisions relating to a purported non-
11 competition clause contained in Plaintiff's "Independent National Sales
12 Director Agreement," Exhibit "A" hereto are totally devoid of any
13 geographic limitation, lack a reasonable time limitation, the scope of
14 activity to be restrained is unreasonable, and purports to impose restraints
15 that are greater than necessary to protect the goodwill or other business
16 interest of Plaintiff and therefore said Agreement is a violation of § 15.05 et
17 seq. of the Texas Business and Commerce Code. As such, said non-
18 compete is unenforceable unless appropriately reformed by the Court
19 pursuant to § 15.51 of the Texas Business and Commerce Code, subject to
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1 an award of reasonable attorneys' fees and costs to Defendant under said
2 section.

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4 WHEREFORE, Defendant prays:

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- 6 1. For dismissal of Plaintiff's Complaint, the Plaintiff taking nothing
7 thereby;
 - 8 2. For an award of her reasonable attorneys' fees and costs pursuant to
9 §§ 15.51, and 17.50(d) of the Texas Business and Commerce Code as
10 well as under § 38.001 of the Texas Civil Practice and Remedies
11 Code;
 - 12 3. For such other and further relief as the Court deems just.

13 IV. COUNTERCLAIM

14 1. DECEPTIVE TRADE PRACTICES

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

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19 11. Mary Kay, in the conduct of its multilevel marketing business, has engaged in
20 false, misleading, and deceptive acts and practices, as the purveyor and seller of an
21 Independent Business Consultant business to Defendant and the many other
22 Independent Beauty Consultants, Unit Independent Sales Directors, and National
23 Sales Directors similarly situated to her, which acts and practices are unlawful
24 under the provisions of §17.46 of the Texas Business and Commerce Code.
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12. By agreeing to acquire her beauty consulting business as an independent contractor, entrepreneur and the owner of her own business as a result of her contracts with Mary Kay, Defendant was a consumer of the Defendant's services as that term is defined under §17.45 of the Texas Business and Commerce Code, having relied on the written and oral representations of Plaintiff that, as an "independent dealer" she was the owner of her own business. Throughout her relationship with Mary Kay, until the very end, she was deceived by the company's continuous, non-stop, orchestrated campaign through speeches at the annual Seminars, business opportunity meetings, CDs, DVDs, cassette/VCR tapes, brochures, letters and emails, representing to her and the other Consultants in her National Sales Director Unit, and throughout the company for that matter, that they were being provided by Mary Kay the business opportunity of "owning" their "own business."

13. Mary Kay, among other deceptive practices, has repeatedly represented to Defendant, its other Independent Beauty Consultants, Unit Independent Sales Directors, and Independent National Sales Directors that their status as such independent contractors affords them the complete ownership of their "own business" which is a deliberate falsehood inasmuch as the Plaintiff's executives

1 are all well aware of the fact that Mary Kay strictly forbids its Consultants, Sales
2 Directors, and National Sales Directors to sell, transfer or will their “businesses,”
3 and wrongfully enjoys the fruits of the labors of those independent contractors by
4 forfeiture of their right to receive the “income stream” or value of it when they die,
5 leave or are terminated by Mary Kay. These trade practices of Mary Kay were
6 misleading, deceptive, and false in that Mary Kay never compensated Defendant
7 for her business after taking it from her without compensation when she resigned
8 as National Sales Director, and would not allow her to sell or will her “business.”
9 Under the provisions of the Texas Business and Commerce Code, Mary Kay
10 violated the provisions of § 2.210(b) of the Texas Business & Commerce Code
11 which renders Section 13 of the Independent National Sales Director Agreement
12 (Exhibit “A” hereto) void since that section requires that contractual rights such
13 as are provided for in the Independent National Sales Director Agreement are
14 assignable thereby allowing Defendant Dunlap’s business to be assigned or
15 otherwise transferred by gift or will. Defendant is entitled to an award of
16 reasonable and necessary attorneys’ fees and court costs pursuant to the provisions
17 of §17.50(d) for being required to defend herself from Plaintiff’s attempt to
18 enforce its false, misleading, and deceptive agreement.
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14. The intentionally false, misleading and deceptive acts which are complained of in this Counterclaim have been committed knowingly, and intentionally, giving rise to damages for mental anguish, including intense and continuous feelings of humiliation suffered by Defendant at the hands of the Plaintiff, as well as the economic damages suffered by the Defendant herein, in an amount which is presently unascertained but which Defendant believes to be in excess of \$1,000,000.00, which amount should be trebled under the provisions of §17.50 of the Texas Business and Commerce Code, making the total amount of her damages not less than \$3,000,000.00 .

15. Plaintiff should be enjoined by this Court under §17.50(b)(2) from engaging in any false, deceptive, and/or misleading acts as are outlawed by Deceptive Trade Practices and Consumer Protection statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of its business.

16. Defendant is entitled to an award of reasonable and necessary attorneys' fees and court costs pursuant to the provisions of §17.50(d).

WHEREFORE Defendant prays for Judgment as follows:

1. An order declaring the Independent National Sales Director Agreement null and void, and enjoining Plaintiff Mary Kay from engaging in any false, deceptive, and/or misleading acts as are outlawed by Deceptive Trade Practices and Consumer Protection statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of its business;

2. Compensatory damages sufficient to compensate the Defendant for economic losses and mental anguish in an amount which is presently unascertained but which Defendant believes to be in excess of \$1,000,000.00, which amount should be trebled under the provisions of §17.50 of the Texas Business and Commerce Code, making the total amount of her damages not less than \$3,000,000.00 .
- 3 . Reasonable and necessary attorneys' fees under the statutes pled hereinabove in this Answer and Counterclaim;
4. Costs, and such other and further relief as the Court deems just.

2. VIOLATIONS OF FEDERAL ANTITRUST LAWS

17. Defendant realleges each and every allegation contained hereinabove as though fully set forth herein.

18. The anti-competitive actions referenced herein constitute restraints of trade which have long been prohibited under the provisions of the Sherman and Clayton Acts, 15 U.S.C. Section 1, et seq.

19. The anti-competition covenants on which Plaintiff insists every Mary Kay independent consultant sign, whether an Independent Beauty Consultant, Unit Independent Sales Director, or Independent National Sales Director such as the Defendant herein, are part of a concerted and effective effort by Plaintiff to vertically restrain trade by tying up and eliminating potential competition from

1 Plaintiff's independent contractors and other direct sales companies much smaller
2 than Plaintiff who sell cosmetic products similar to Plaintiff's line of cosmetic
3 products, particularly in, but not limited to, the Texas market. Plaintiff is
4 attempting to restrain Defendant by use of its unlawful non-compete agreement
5 from competing with Plaintiff and those other independent contractors with whom
6 Defendant seeks to recruit to assist her in building her current direct sales
7 business. Such restraints by Plaintiff are unreasonable, and because Plaintiff has
8 exerted such tight control over its independent contractors, particularly as it
9 applies to attempts to do business in the Texas market for cosmetics, Defendant
10 has been unfairly damaged, and the growth of her business stunted, economically
11 in an undetermined amount but in no event less than \$1,000,000.00 in her efforts
12 to build her business in Texas and elsewhere subsequent to resigning as a National
13 Sales Director with Plaintiff.

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15 20. Under 15 U.S.C Section 15, Defendant is entitled to have her damages trebled
16 and as such her damages as a result of the antitrust violations of Plaintiff total not
17 less than \$3,000,000.00. Additionally, she is entitled to recover her attorneys' fees
18 and court costs under said antitrust statutes. Finally, Defendant is entitled to
19 injunctive relief against Plaintiff from continuing its antitrust violations directed
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1 against her under 15 U.S.C. Section 26.

2 WHEREFORE Defendant prays for Judgment as follows:

- 3 1. An order declaring the Independent National Sales Director Agreement
- 4 null and void;
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- 6 2. Compensatory damages sufficient to compensate the Defendant for her
- 7 losses in an amount which is presently unascertained but which Defendant
- 8 believes to be in excess of \$1,000,000.00, which amount should be trebled
- 9 making the total amount of her damages not less than \$3,000,000.00 .
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- 11 3. Reasonable and necessary attorneys' fees under the statutes pled
- 12 hereinabove in this Answer and Counterclaim;
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- 14 4. Costs, and such other and further relief as the Court deems just.

15 3. ALTERNATIVE CLAIM FOR REFORMED AGREEMENT

16 21. Defendant realleges each and every allegation contained hereinabove as

17 though fully set forth herein.

18 22. In the event Defendant is not granted relief which voids the Independent

19 National Sales Director Agreement (Exhibit "A" hereto), then Defendant is

20 entitled to have the provisions of paragraph 8.10, and any other provisions which

21 relate in any way to a non-compete agreement reformed. If the Court finds that the

22 Agreement attached hereto as Exhibit "A" is not null and void under the defenses

23 and claims set forth above, and that the covenant not to compete contained in it is

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1 ancillary to an otherwise enforceable agreement, then the provisions relating to a
2 purported non-competition clause contained in Plaintiff's "Independent National
3 Sales Director Agreement," Exhibit "A" hereto are totally devoid of any
4 geographic limitation, lack a reasonable time limitation, the scope of activity to be
5 restrained is unreasonable, and purports to impose restraints that are greater than
6 necessary to protect the goodwill or other business interest of Plaintiff.
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8 Therefore, said Agreement is in violation of § 15.05 et seq. of the Texas Business
9 and Commerce Code. As such, said non-compete is unenforceable unless
10 appropriately reformed by the Court pursuant to § 15.51 of the Texas Business and
11 Commerce Code, subject to an award of reasonable attorneys' fees and costs to
12 Defendant under said section.
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14 WHEREFORE Defendant prays for Judgment as follows:
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- 16 1. An order declaring the Independent National Sales Director Agreement
17 null and void, or in the alternative, reforming same with respect to the non-
18 compete provisions set forth therein;
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- 20 2. Reasonable and necessary attorneys' fees under the statutes pled
21 hereinabove in this Answer and Counterclaim;
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- 23 3. Costs, and such other and further relief as the Court deems just.
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25 Respectfully submitted this 1st day of February, 2012.

26 /s/ David Eisenstein

27 by, David G. Eisenstein, *pro hac vice*

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

2 4027 Aidan Circle

3 Carlsbad, California 92008

4 (760) 730-7900

5 (760) 730-7903 FAX

6 Eisenlegal@aol.com

7 attorney for the Defendant

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's Answer and Counterclaim has been served on counsel for the Plaintiff as follows:

[X] BY ELECTRONIC TRANSMISSION:

Through the United States District Court's ECF transmission to the following:

CHRIS J. SCHWEGMANN, cschwegmann@lynllp.com

JOHN T. COX, III, tcx@lynllp.com

LYNN TILLOTSON PINKER & COX

2100 ROSS AVENUE, SUITE 2700

DALLAS, TEXAS 75201

Dated this 1st day of February, 2012

/s/ David Eisenstein

David Eisenstein

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EXHIBIT A

INDEPENDENT NATIONAL SALES DIRECTOR AGREEMENT

THIS AGREEMENT, dated March 1, 2005, by and between MARY KAY INC., (hereinafter called "Company"), a Delaware corporation with its principal offices at 16251 Dallas Parkway, Post Office Box 799045, Dallas, Texas 75379-9045, and the independent contractor (hereinafter called "NSD"), whose name and address appear below:

Amy Dunlap
29 Wimbledon Court
Troy, MO 63379-2416

WITNESSETH:

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

WHEREAS, NSD is engaged in business as an independent dealer ("Beauty Consultant") for Mary Kay® products, purchasing such products from Company and reselling for NSD's own account to ultimate consumers of NSD's choice and proposes to continue such business; and has also demonstrated exceptional ability as an outstanding Unit and Independent Senior Sales Director, aiding, counseling and inspiring other Independent Beauty Consultants and Unit Independent Sales Directors; and

WHEREAS, Company, recognizing the increased sales potential and other benefits accruing from development of a strong, highly motivated, national selling force of Unit Sales Directors, has established a special incentive program (hereinafter called "National Sales Director Program") for those Unit and Senior Sales Directors who particularly distinguish themselves through success and who demonstrate outstanding ability to motivate others to become successful Unit Sales Directors associated with Mary Kay; and

WHEREAS, the National 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 Beauty Consultants and Unit Sales Directors counseled by the participating NSD, (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 very valuable rights, privileges and benefits more fully described in this Agreement; and

WHEREAS, NSD has received valuable specialized instruction, education and information covering cosmetic arts, leadership, business management, motivation, recruiting and selling techniques through personal participation in educational programs, classes, business meetings and Seminars conducted by Company in Dallas, Texas, and through other Company-sponsored programs and events qualifying NSD to become a National Sales Director; and

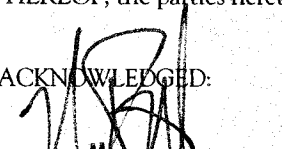
WHEREAS, NSD desires to participate in the National Sales Director Program and is willing to act as a "Business Consultant" to and share the benefits of NSD's sales and motivational knowledge and experience with other Unit Sales Directors and particularly to offer aid, counsel and inspiration to all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

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

NOW, THEREFORE, in consideration of NSD's meeting the standards of personal performance for qualification and participation in the National Sales Director Program, and in further consideration of the premises and the mutual covenants set forth in this Agreement including the "General Terms and Conditions," and the "Annexes" which are made a part hereof, Company hereby agrees to appoint NSD as "National Sales Director" and NSD 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.

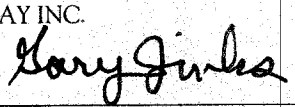
IN WITNESS WHEREOF, the parties hereto have signed these presents effective as of the day and year first above written.

ACCEPTANCE ACKNOWLEDGED:

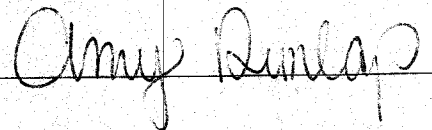

Nathan P. Moore, Secretary

MARY KAY INC.

By:


Gary Jinks, Senior Vice President, Sales

INDEPENDENT NATIONAL SALES DIRECTOR:



[Note: Page 2, the reverse side of the first page of the Agreement is left blank in the original]

GENERAL TERMS AND CONDITIONS

SECTION 1. APPOINTMENT AS NATIONAL SALES DIRECTOR

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

SECTION 2. SALES GROUP DEFINED

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

- (i) all active offspring units on which NSD is, at the time of NSD's appointment herein, receiving Senior Sales Director's Commission (sometimes called "First-Line Units"); and
- (ii) all active Units on which such First-Line Sales Directors are, at the time of NSD's appointment herein, receiving Senior Sales Director's Commission (sometimes called "Second-Line Units"); and
- (iii) in certain cases, other active units which are assigned by Company to NSD's Sales Group when First-Line or Second-Line Units within the initial Sales Group are dissolved by virtue of advancement or termination of a Unit Sales Director within the Sales Group; and
- (iv) any other active Units which may be defined and included as a part of NSD's Sales Group by the Annex or Annexes attached and made a part hereof or any subsequent amendments or revisions thereof.

Only persons residing in the U.S., its territories and possessions, Republic of Mexico and the Dominion of Canada shall be eligible to be considered members of an NSD's Sales Group under this Agreement.

SECTION 3. COMMISSIONS

3.1 NSD shall have the right to receive from Company incentive compensation for NSD's activities in counseling and motivating and promoting retail sales and recruiting efforts of the Units within NSD's Sales Group which shall be in the form of monthly commission based upon the total monthly wholesale purchases ("Wholesale Purchase Volume") of all Mary Kay* products bought for resale by all members of the particular Sales Group counseled and advised by NSD.

3.2 For purposes of calculation of commissions payable hereunder, the monthly Wholesale Purchase Volume of the Sales Group upon which commissions shall be payable shall be the sum of the net prices paid for all Mary Kay* products purchased for resale by all members of NSD's Sales Group during a calendar month 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 any order under this Section.

3.3 Monthly commissions and bonuses, where applicable, shall be paid by Company to NSD in accordance with the Annex or Annexes attached and made a part hereof.

3.4 Company reserves the right to alter, modify or change any discount, commission or bonus provision of this Agreement from time to time by not less than sixty (60) days prior written notice to NSD.

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

4.1 The National Sales Director Program is intended to promote the development of a strong selling force and consumer market for Mary Kay* products. Therefore, no commission shall be payable on a new Beauty Consultant's purchase of a Starter Kit nor shall any compensation be paid solely for the act of introducing or recruiting a new Beauty Consultant into the Mary Kay organization, and no commission shall be payable on the purchase of any sales aids or other items other than 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 the Sales Group, 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 Group as all Mary Kay* products not sold to consumers are subject to return to the Company for repurchase by it at the election of any terminating Beauty Consultant or Unit Sales Director.

4.2 It is expressly understood and agreed that upon the return of Mary Kay* products and Company's repurchase of such products from any terminating Beauty Consultant or Unit Sales Director within NSD's Sales Group, the commissions payable to NSD during the month in which the return occurs shall be reduced by the amount of the commissions previously paid upon such returned products (i.e., products which were not sold at retail).

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

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

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

5.2 The rights granted herein do not include any right to use trademarks of Company in NSD's trade name, except as specifically set forth herein or as authorized by Company in writing. Each use by NSD 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 National Sales Director" prominently displayed in the form set forth below (or in such other form as Company shall have previously authorized in writing):

(NAME OF NSD)

INDEPENDENT NATIONAL SALES DIRECTOR
MARY KAY

5.3 To protect NSD's Mary Kay business, the business of those Beauty Consultants and Unit Sales Directors in NSD's Sales Group and the Company from the risks of false, deceptive, misleading or unsubstantiated advertising claims or any unauthorized guarantees, warranties or representations, NSD 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 NSD 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 NSD'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 NSD's bank accounts, checks, or on any trade or credit card account of NSD, unless authorized by Company in writing.

SECTION 6. RIGHT TO PARTICIPATE IN YELLOW PAGES ADVERTISING PROGRAM

6.1 NSD 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 NSD 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 NSD in NSD's Mary Kay business from such standardization, NSD agrees that only such National Yellow Pages Advertising Agency may place telephone directory advertising under such registered trademarks as agent for NSD.

6.2 NSD agrees that in the event of termination of NSD's status with Company for whatever reason, or upon NSD's moving from any area in which authorized Yellow Pages advertising has been placed in a directory, any telephone service and numbers employed by NSD 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, NSD hereby authorizes any telephone company to deal with such telephone number solely on the authorization and direction of Company, and NSD 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 number by telephone company at and in accordance with Company's direction.

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

7.1 NSD presently acts as a Beauty Consultant purchasing Mary Kay® products at wholesale from Company and selling to ultimate consumers of her choosing at retail and may continue to conduct this business. The parties agree that NSD 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 Independent Beauty Consultant Agreement as amended from time to time, together with all additional rights, privileges, benefits and responsibilities of a National Sales Director as provided under this Agreement.

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

- (i) To use the copyrighted "Career Essentials," "Action Plan for Independent Sales Directors" or any other copyrighted materials of Company, in connection with motivating, inspiring, aiding and counseling other Beauty Consultants and Unit Sales Directors in the Sales Group regarding their Mary Kay businesses; provided, however, that NSD 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.
- (ii) To purchase or otherwise receive such incentive, promotional items and materials, gifts, products and sales aids as may be made available by Company for NSD's use in furthering the success of Beauty Consultants and Unit Sales Directors within NSD's Sales Group.
- (iii) To compete for such recruiting, sales prizes, incentive and competitive awards as may be offered to National Sales Directors by Company from time to time, subject to the rules and regulations established by Company with respect to such competition.
- (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 National Sales Directors.

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

- (i) ongoing valuable specialized education and instruction in motivation, selling and recruiting techniques relating to the direct sales method of product marketing and specific education concerning cosmetic products and the art of cosmetic application;
- (ii) 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 National Sales Director in the Mary Kay independent contractor sales organization;
- (iii) special recognition by Company as a leader and motivator of a Sales Group comprising numerous independent contractors, in an area which may include all of the United States and various foreign jurisdictions and which will include Sales Directors and Beauty Consultants other than individuals personally recruited by NSD, and receipt of various valuable override commissions relating to the Wholesale Purchase Volume and sales activities of such Sales Group;
- (iv) 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 various 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 NSD agrees to treat as confidential and not utilize or disclose for purposes which conflict with the business interests of the Company; and
- (v) valuable special recognition at various major Company-sponsored events, national publicity in Company publications and promotional assistance to stimulate sales by NSD's Sales Group and promote NSD's personal image as a successful and dynamic leader, motivator, salesperson and recruiter, designed to enhance NSD's prestige and influence with members of the Mary Kay independent contractor sales organization.

SECTION 8. NSD'S RESPONSIBILITIES

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

8.2 NSD agrees to use NSD's best efforts to promote the sale of Company's products; to encourage and motivate Consultants and Unit Sales Directors in NSD's Sales Group; to work conscientiously and diligently to recruit suitable Beauty Consultants and Unit Sales Directors and to aid, help, counsel and advise cheerfully, conscientiously and promptly, Beauty Consultants and Unit Sales Directors who wish to avail themselves of NSD's experience in the sale of Mary Kay® products, recruiting, customer problems, Unit problems or otherwise.

NSD, recognizing that NSD will make personal appearances, present speeches, lectures and sessions at various Mary Kay-related meetings and may, from time to time, produce and distribute to other members of the sales organization newsletters and other Mary Kay-related sales education, promotional and motivational materials created by NSD, 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 NSD'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 educational, promotional, marketing or advertising purposes which Company may deem appropriate.

8.3 NSD understands and agrees that NSD will not maintain a fixed geographical location at which NSD displays for sale and sells any Mary Kay® product or offers for sale and sells any Mary Kay® service. NSD understands that this Agreement does not contemplate the offer for sale and sale of any services of the Company; and NSD agrees not to represent to anyone that NSD is offering for sale and selling any services of the Company.

8.4 NSD 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 NSD 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. NSD 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. NSD 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 NSD is injurious to Company's rights, privileges and immunities in respect thereto.

8.5 NSD 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. NSD shall not in any manner represent that NSD has any ownership in any Company trademark and specifically acknowledges that any use of any of said trademarks shall not create for NSD's favor or benefit any right, title or interest in such trademarks, but all uses by NSD of said trademarks shall inure to the benefit of Company. Furthermore, NSD 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 NSD 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 As the commission compensation payable and other rights granted hereunder to NSD are based upon NSD's agreement to use NSD's best efforts to promote the sale of Company's products, NSD 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. NSD 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.

Notwithstanding the provisions of the foregoing paragraph, as an exclusive right which Company grants only to National Sales Directors, NSD shall have the right to author, produce, publish and market NSD's personal original creative works, including books, audiocassette tapes and videotapes for sale to the general public and to members of the Mary Kay independent contractor sales organization; provided that any such work which makes reference to the Company name, trade name or any Company trademark, or which is to be marketed to members of the Mary Kay sales organization, or which is to be marketed in any way utilizing names and addresses of members of the Mary Kay sales organization which have been obtained by NSD in the course of NSD's association with Company, must be submitted to the Company for review and approval as to the content, form and NSD's proposed method of distribution. NSD's right to refer to or utilize the Company's name, trade name or any Company trademark in any creative work for NSD's sale or distribution to the general public or to members of the Mary Kay sales organization, including any sale or distribution by any third party authorized or permitted by NSD, is expressly conditioned on NSD's entering into an appropriate licensing agreement with Company confirming Company's approval of the content, form and method of distribution of such works. To avoid conflicts with Company-sponsored events and sale of Company-produced materials at such events, NSD shall refrain from offering, selling or attempting to sell NSD's creative works at or in conjunction with any such event.

8.7 NSD agrees to conduct business with the highest standards of integrity, honesty and responsibility in all dealings with customers, fellow National Sales Directors, Unit Sales Directors, Beauty Consultants and the Company, and to constantly emphasize and promote the necessity of good customer relations and the Sales Group's participation in and support of Company promotions and marketing programs.

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

8.9 NSD agrees to notify Company in writing and, if appropriate, recommend termination of the Agreements of any Beauty Consultant or Sales Director believed by NSD to have engaged in any unfair, unethical or unlawful business practices or other acts in violation of the terms of their Agreements 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, NSD agrees to continuously and faithfully employ NSD's best efforts to promote the sale of Mary Kay® products throughout the market area served by NSD's Sales Group during the period this Agreement is in effect. NSD 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. NSD further agrees not to utilize, or knowingly permit any other person to utilize, any names, mailing lists or other non-public business information which NSD obtains during NSD'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. NSD further agrees that during the period of NSD's business relationship with Company as a National Sales Director and for a period of two (2) years following date of any termination of such status for any reason, that NSD 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 NSD's own account or that of others. NSD further expressly agrees to refrain, during the period of NSD's relationship with Company as a National 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 NSD knows or has reason to believe is then under contract as a member of the Mary Kay independent sales organization. NSD agrees that Company may have, in addition to any other remedies available at law, an injunction restraining NSD from any violation of the terms of this Section 8.10, and that a temporary restraining order may be issued, without prior notice to NSD, 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 for any reason on the date of expiration of the first or any succeeding terms by written notice to the other party mailed at least sixty (60) days prior to date of expiration.

10.2 This Agreement regarding NSD's activities may be terminated effective immediately at Company's option, effective thirty (30) days after mailing to NSD of written notice of termination by Company if NSD shall fail to comply with any of the terms and conditions of this Agreement or in the event of any of the following:

- (i) If NSD should do any act detrimental to the reputation of Company or its products or should do any act materially detrimental to any trademark, trade name or the goodwill connected therewith or any copyright owned by Company; or
- (ii) If NSD should fail to pay when due any indebtedness to Company, to other NSDs, Sales Directors, Beauty Consultants or customers, or engage in credit practices deemed detrimental to the image and goodwill of Company and its associates; or
- (iii) If NSD 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 National Sales Director; or

(iv) If NSD should engage in any activity or conduct in violation of the provisions of Section 8.10; or

(v) If any dispute, disagreement or controversy should develop between NSD and fellow Sales Directors, or between NSD and Beauty Consultants in NSD's Sales Group, which in the sole judgment of Company may materially and adversely affect the reputation of Company, the reputation of Mary Kay® products or the goodwill related to the trademarks or trade names owned by Company; or

(vi) If NSD should be convicted of any crime which may materially and adversely affect the reputation of the Company or the goodwill related to the trademarks or trade names owned by Company.

10.3 This Agreement shall terminate immediately upon NSD'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 NSD has in regard to National Sales Director activities under this Agreement shall terminate. Upon termination of National Sales Director status, NSD will immediately discontinue all uses of Company's trade name, trademarks or copyrighted materials in forms which are authorized only for use by National Sales Directors hereunder, and will make or cause to be made such changes as necessary in office door signs and vehicles, telephone directory listings, etc., and redeliver such printed materials or other items as Company may direct in order to effectuate such termination and discontinuance.

SECTION 11. RELATIONSHIP — INDEPENDENT CONTRACTOR

11.1 The relationship created and intended to be created is that NSD is an independent contractor for commission compensation measured by the results achieved, the measurement of those results being the Wholesale Purchase Volume of NSD's Sales Group. This is not a franchise agreement and it is recognized, understood and agreed that NSD is not a franchisee, joint venturer with, or partner, agent or employee of Company. Nothing in this Agreement shall be deemed to permit or empower NSD 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 on behalf of, or in the name of Company, or to act on 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 NSD performs NSD's activities or accomplishes NSD's objectives hereunder and shall only look to NSD for results achieved, as measured by the Wholesale Purchase Volume of NSD's Sales Group.

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

11.3 As an independent contractor, NSD 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 NSD with a statement in the form prescribed by law reflecting all compensation including all commissions, prizes, awards, or other compensation paid by Company to NSD or on NSD's behalf during the year or other legally prescribed reporting period.

11.4 The parties acknowledge that the NSD is not an employee and will not be treated as an employee with respect to any services for state or federal tax purposes, or otherwise.

SECTION 12. INDEMNIFICATION

NSD acknowledges that NSD is an independent contractor and solely responsible for any claims, losses, damages or liability arising out of NSD's activities hereunder. NSD 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 NSD concerning product effectiveness, earnings opportunity or NSD's failure to comply with laws applicable to NSD's business. Company acknowledges and agrees that NSD 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 or Unit Sales Directors against Company by virtue of its activities, nor for claims alleging inherent product defects, and Company agrees to indemnify and hold NSD 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 NSD and may be assigned by Company 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 an 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 NSD 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 NSD.

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, Registered or regular 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:

Legal Resources
Mary Kay Inc.
P.O. Box 799045
Dallas, Texas 75379-9045

If to NSD:

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 notice to the other party hereto.

INDEPENDENT NATIONAL SALES DIRECTOR AGREEMENT

ANNEX I

SCHEDULE OF COMMISSIONS AND BONUSES

I. National Sales Director ("NSD") Commission Schedule

Based on Monthly Wholesale Purchase Volume of Each First-Line Offspring Sales Unit	NSD Commission
0 - \$ 7,999.99	7%
\$ 8,000 - \$15,999.99	8%
\$16,000 - \$23,999.99	9%
\$24,000 or more	10%
Personal Unit Monthly Wholesale Purchase Volume	10%
Second-Line Offspring Sales Unit's Combined Monthly Wholesale Purchase Volume	4%
Third-Line Offspring Sales Unit's Combined Monthly Wholesale Purchase Volume	2%

II. Senior National Sales Director Commission Schedule

- A. Commission is payable on the Wholesale Purchase Volume of the Personal Sales Unit of Offspring NSDs according to the following schedule:

	NSD Commission
First-Line Offspring Sales Director who becomes an NSD	5%
Second-Line Offspring Sales Director who becomes an NSD	4%
Third-Line Offspring Sales Director who becomes an NSD	2%

These personal Sales Unit commissions are payable regardless of debut* sequence, even if the Offspring NSD debuted prior to the Senior NSD. Likewise, it does not matter if another NSD exists between the Senior NSD and the downline NSD.

*"Debut," for purposes of this Agreement, refers to original appointment as an Independent National Sales Director or Independent Sales Director as applicable. The date of debut is the effective date of the individual's original Independent National Sales Director Agreement or Independent Sales Director Agreement as applicable.

- B. Senior NSDs will be paid commission on third lines overlapped in an Offspring NSD's area at the same commission rate in effect immediately prior to the Offspring NSD's debut. When subsequent Offspring NSDs debut, the commission payable on those overlapped third lines will remain at whatever commission rate was being earned immediately prior to the subsequent Offspring NSD's debut.

III. Offspring NSD Development Bonus Schedule

When a new Offspring NSD is developed out of any line of the NSD's unaffiliated area, the Senior NSD is entitled to a \$10,000 Offspring NSD Development Bonus at the time of the new Offspring NSD's debut, and annually thereafter for so long as this Agreement is in effect. There shall only be one (1) recipient of this bonus. For purposes of determining the recipient of this bonus, the NSD of the new Offspring NSD four (4) months prior to the new Offspring NSD's debut, receives the bonus.

IV. First-Line Sales Director Offspring Bonus

Bonuses will be paid for the development of Sales Directors from NSD's personal unit according to the following schedule:

At time of Offspring Sales Director's debut	\$5,000
At annual anniversary of Offspring Sales Director's debut when Offspring Sales Director generates wholesale production of \$60,000 or more within last 12 months	\$1,000

V. Commissions on Canadian and Mexican Offspring Units

- A. CANADA. For purposes of determining commissions for eligible NSDs who have Offspring 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 Canadian dollars, and monthly commissions shall be 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 NSD 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.

- B. MEXICO. For purposes of determining commissions for eligible NSDs who have Offspring Units in Mexico, the Unit Wholesale Purchase Volume of purchases of Mary Kay® products from Mary Kay Cosméticos de Mexico, 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 NSD on the sale of Mary Kay Mexico products shall be paid monthly by Mary Kay Inc. during the month following the month in which the commissions are earned. All commission payments shall be subject to any applicable laws and regulation of the U.S. and Mexican governments.

VI. NSD Personal Team Commission13% Commission

QUALIFICATION: To qualify to receive an NSD Personal Team Commission of 13% on the monthly Wholesale Purchase Volume of NSD's personal team members (recruits), NSD must have five or more personal team members (recruits) who each place a minimum \$200 Section 1 wholesale order in that calendar month.

VII. NSD Product Purchases

As a National Sales Director, the NSD shall be eligible to receive a 50% discount off the suggested retail selling price on NSD's purchase of any products listed in Section 1 of the Consultant order form which is in effect at the time of the purchase.

VIII. NSD Motivation Account

A special motivational and promotional allowance ("Motivation Account") to help defray certain motivational and promotional expenses such as the cost of prizes, awards, newsletters, telephone calls, etc., associated with the NSD's activities with non-commissionable Offspring Sales Units (fourth lines and beyond). The motivational and promotional allowance granted to National Sales Directors for this purpose will be calculated based on the number of the NSD's Offspring Sales Units which are fourth line and beyond as determined in June of each annual term of this Agreement and will be paid as a lump sum payment in July of the same year. Overlapping offspring lines which fall within the Sales Groups of Offspring National Sales Directors will not be used in the calculation of the Motivation Account. Canadian and Mexican Offspring Sales Units (fourth and beyond) will be included in the calculation. The Motivation Account Schedule will be as follows:

MOTIVATION ACCOUNT SCHEDULE

Offspring Sales Units (Fourth and Beyond)	Payment
1-10	\$ 300
11-20	\$ 500
21-50	\$1,000
51-100	\$2,000
101-200	\$3,000
201-300	\$5,000
300+	\$7,000

ANNEX II

NATIONAL SALES DIRECTOR ("NSD") PERSONAL SALES UNIT SCHEDULE OF COMMISSIONS

I. Sales Director Commission

A Sales Director's commission of 13% shall be payable on the monthly Wholesale Purchase Volume of an NSD's personal Sales Unit provided the Company elects, in its sole discretion, to grant the NSD the option to maintain a personal Sales Unit concurrently with service as a National Sales Director.

II. Senior Sales Director Commission

A Senior Sales Director's commission of 5% shall be payable on the monthly Wholesale Purchase Volume of the personal Sales Unit of an NSD's First-Line Offspring NSD provided the Company elects, in its sole discretion, to grant the First-Line Offspring NSD the option to maintain a personal Sales Unit concurrently with service as a National Sales Director.