

CAUSE NO. DC-11-10448

MARY KAY INC.,

Plaintiff,

v.

BENJAMIN THAYER AND
INEZ THAYER,

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

L-193RD JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

To the Honorable Judge of Said Court:

COMES NOW, Mary Kay Inc., Plaintiff, and files this Original Petition against Defendants Benjamin Thayer and Inez Thayer ("Defendants"), and would show the Court as follows:

I.
DISCOVERY CONTROL PLAN

Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff respectfully requests that the discovery of this case be undertaken pursuant to Discovery Control Plan Level 2, as set forth in Rule 190.3 of the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

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

2. Benjamin Thayer is an individual residing at 3580 S. Shawnee Avenue, Pahrump, Nevada 89048.

3. Inez Thayer is an individual residing at 3580 S. Shawnee Avenue, Pahrump, Nevada 89048.

III. FACTS

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

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

6. The IBC Agreement also places obligations on the IBC designed to protect the stature of the Mary Kay's trademarks. The terms of the IBC Agreement prohibit IBCs from using the Mary Kay name or trademark in any advertising, specifically prohibiting the use of the Mary Kay name and trademark in internet advertising or sales without Mary Kay's prior written

approval. Mary Kay expressly retains the exclusive right to use and advertise the Mary Kay name and trademark at its discretion and in a manner consistent with the Mary Kay business model.

7. Defendants were Mary Kay IBC's and fully bound by the terms of the IBC Agreement. Defendants breached this Agreement by selling or facilitating the sale of Mary Kay products through channels prohibited by the IBC Agreement.

8. Defendants have been facilitating the sale of Mary Kay cosmetics on eBay, Inc. ("eBay") under the username "simple*beauty*forever," in violation of Texas law. Defendants are former IBC's, contractually prevented from selling Mary Kay products online. Mary Kay did not authorize the sale of any of its products, or the use of its trademarks or trade dress, on eBay. Further, Mary Kay did not authorize any person to sell any of its products to Defendants for the purpose of reselling such products on eBay.

IV. CAUSES OF ACTION

A. Breach of Contract

9. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

10. Defendants entered into the IBC Agreement with Mary Kay. They were bound by the terms of that Agreement. Defendants breached that Agreement by selling and/or facilitating the sale of Mary Kay products through channels which were specifically prohibited in the IBC Agreement. This breach has caused Mary Kay substantial injury in an amount which exceeds the minimum jurisdictional limits of this Court.

B. Tortious Interference with Contract

11. Plaintiff hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

12. The IBC Agreement sets forth specific parameters which govern the relationship between the Beauty Consultant and Mary Kay. The IBC Agreement specifically limits the channels through which Mary Kay products may be sold.

13. Defendants knowingly and intentionally interfered with IBC Agreements by purchasing Mary Kay products from Mary Kay Beauty Consultants, knowing that such purchase was strictly prohibited by the IBC Agreement. This interference proximately caused Mary Kay Substantial and actual injury in an amount which exceeds the minimum jurisdictional limits of this Court.

**V.
PRAYER**

WHEREFORE, Plaintiff prays that this Court enter judgment in its favor and against Defendants on all of Plaintiff's claims and award Plaintiff the following relief:

- A. Compensatory damages in an amount to be determined at trial;
- B. Pre and post-judgment interest;
- C. Punitive damages;
- D. Injunctive relief;
- E. Plaintiff's attorneys' fees and costs incurred in prosecuting these claims as allowed by law; and,
- F. Such other and further relief as this Court deems just and equitable.

Respectfully submitted,



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