

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ST. LOUIS, MO
FILED
MAY 7 2008
CLERK, U.S. DISTRICT COURT
By _____ Deputy



808 CV - 776 - G
CIVIL ACTION NO. 77-6 - G

JURY DEMANDED

21697

**ORIGINAL COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND
MOTION FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY**

I. INTRODUCTION

1. Defendant Amy Weber is a former Mary Kay Independent Beauty Consultant. This case arises from the willful and deceitful acts of Ms. Weber, along with her husband Scott Weber and their company Touch of Pink Cosmetics, to encourage and facilitate current Mary Kay Independent Beauty Consultants to violate the terms of their contracts with Mary Kay – a contract Ms. Weber knows well and references on the Touch of Pink Cosmetics website – and to confuse and deceive consumers through the wrongful use of the Mary Kay name and trademark to sell products on the Touch of Pink Cosmetics website and through an eBay store.

2. Mary Kay is a company dedicated to promoting opportunities for women to set and pursue their own career goals, at their own pace, and based upon their own efforts. Since its inception in 1963, Mary Kay's mission has been to enrich the lives of women by giving them the tools and opportunities to build successful independent retail businesses selling Mary Kay products. To ensure the success of Mary Kay and its Independent Beauty Consultants, Mary Kay has dedicated countless resources to develop top-of-the-line products, a proven marketing and distribution model for the direct sale of those products, and a world-recognized brand and trademark. For the protection of its Independent Beauty Consultants and its trademark, Mary Kay requires its Independent Beauty Consultants, by the terms of its Independent Beauty Consultant Agreement (the "IBC Agreement"), to: (1) sell Mary Kay products directly to ultimate consumers only and not through retail sales outlets, including Internet websites; and (2) protect the Mary Kay trademark by obtaining Mary Kay's permission prior to using the Mary Kay name in any advertising.

3. While she was a Mary Kay Independent Beauty Consultant, Defendant Amy Weber violated the terms of her IBC Agreement with Mary Kay by selling Mary Kay products on the Internet auction website eBay and further abused the direct sales model carefully developed to protect her and other Independent Beauty Consultants in addition to Mary Kay. After numerous pleas by Mary Kay to stop improperly advertising and selling its products on eBay, Mary Kay was forced to terminate its IBC Agreement with Defendant Amy Weber. Now, with full knowledge of the terms of the Mary Kay IBC Agreement, both Amy and Scott Weber, through their Touch of Pink Cosmetics website and e-mail newsletters, blatantly solicit and encourage Mary Kay Independent Beauty Consultants to violate their IBC Agreements with Mary Kay by selling Mary Kay products to Touch of Pink, rather than to ultimate consumers, for the unauthorized Internet resale of the products. In doing so, the Weber Defendants are

intentionally interfering with Mary Kay's established contractual relationships (*i.e.*, inducing Independent Beauty Consultants to breach their respective IBC Agreements with Mary Kay). In addition, the Weber Defendants' conscious disregard for Mary Kay's established direct sales model, through the unlawful Internet sale of Mary Kay products for their own personal profit, further interferes with Mary Kay's prospective business relationships.

4. Moreover, the Weber Defendants continue to violate Mary Kay's rights through the unauthorized use of the Mary Kay trademark on the Touch of Pink website and the eBay store, the Internet, and e-mail solicitation. This deliberate and willful violation of Mary Kay's trademark rights is not only harming Mary Kay and its famous trademarks, but it is also confusing and deceiving consumers by suggesting an affiliation with or sponsorship by Mary Kay that does not exist. For example, the Weber Defendants' website suggests that all products sold on the website are products manufactured by or affiliated with Mary Kay; yet, the Weber Defendants sell products on the website that are not affiliated in any way with Mary Kay. The Weber Defendants' dishonest attempt to "pass-off" these products as Mary Kay products is tantamount to unfair and deceptive trade practices and further violates Mary Kay's established rights.

5. The continued activities of the Weber Defendants pose a substantial risk of irreparable harm to Mary Kay, its Independent Beauty Consultants, and its trademarks. As a result, Mary Kay seeks a preliminary injunction and ultimately a permanent injunction against the Weber Defendants, as well as relief for the damages suffered by Mary Kay as a result of their actions.

II. PARTIES

6. Plaintiff Mary Kay Inc. 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.

7. Defendants Amy L. Weber and Scott J. Weber are individuals residing in La Salle, Illinois. Amy Weber and Scott Weber may be served with process at their residence at 200 Mary Senica Court, La Salle, Illinois 61301-9676.

8. Defendant Touch of Pink Cosmetics is an unauthorized internet reseller of Mary Kay products. Touch of Pink maintains its principal place of business at 200 Mary Senica Court, La Salle, Illinois 61301-9676. On information and belief, Touch of Pink is an unincorporated association with Defendant Amy Weber as the sole proprietor. Touch of Pink can be served with process, pursuant to Federal Rule Civil Procedure 4(h)(1), by serving Plaintiff's Original Complaint for Damages and Injunctive Relief and Motion for Leave to Conduct Expedited Discovery on its agent and sole proprietor, Amy Weber, at 200 Mary Senica Court, La Salle, Illinois 61301-9676.

III. JURISDICTION AND VENUE

9. Mary Kay has brought claims against Defendants for violations of the United States Trademark Act, 15 U.S.C. §§ 1051 *et seq.*, which arise under federal law. As a result, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331.

10. This Court also has subject matter jurisdiction over this cause pursuant to 28 U.S.C. § 1332(a). This is an action for damages in excess of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

11. Pursuant to 28 U.S.C. §1391(a)(2), venue is also proper in the Northern District of Texas because the conduct complained about herein occurred, in part, in Dallas, Texas. On information and belief, the Weber Defendants have conducted business in the state of Texas by improperly purchasing, or at least soliciting the purchase of, Mary Kay products from Independent Beauty Consultants, whose IBC Agreements were entered into in Texas and are governed by Texas law, and improperly selling Mary Kay products over the Internet to Texas residents.

IV. FACTUAL ASSERTIONS

A. **Mary Kay's Proven and Successful Business Model**

12. Mary Kay is a manufacturer and wholesale distributor of cosmetics, toiletries, skin care, and related products. The worldwide success of Mary Kay is undeniable; the Company's products are now sold in over thirty-five (35) markets around the world. Founded in 1963, Mary Kay has become one of the largest direct sellers of skin care products and color cosmetics in the United States. In 2006 alone, sales of products bearing the Mary Kay trademark exceeded \$2.25 billion. Moreover, its founder, Mary Kay Ash, has been widely recognized as one of the most influential businesswomen in history. Notwithstanding its international presence, Mary Kay maintains its national headquarters in Addison, Texas and continues to manufacture its products primarily at its manufacturing facility in Dallas, Texas.

13. 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 Independent Beauty Consultants, who then sell the products to their customers, the ultimate consumers. Mary Kay provides the Independent Beauty Consultants with product knowledge

that they can, in turn, share with their customers to provide the highest level of customer service and ensure product satisfaction. In turn, the Mary Kay trademark has earned and enjoys a highly distinctive and famous status, a stature Mary Kay vigorously protects.

1. *Mary Kay's Direct Sales Model*

14. Mary Kay uses the direct-sales method to market its products. Mary Kay sells its products at wholesale prices, and on a pre-paid basis, to the self-employed Independent Beauty Consultants. The Independent Beauty Consultants then offer the Mary Kay products to their customers at retail prices. An individual becomes an Independent Beauty Consultant 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. Independent Beauty Consultants make profits from the retail sales of Mary Kay products to their customers. Independent Beauty Consultants may also choose to recruit others to become Independent Beauty Consultants and can earn commissions when the individuals they recruited make wholesale purchases of products from Mary Kay to sell at retail to their customers.

2. *Mary Kay's IBC Agreements Protect Its Direct Sales Model, Business Reputation, and Trademark Rights*

15. The IBC Agreement places certain obligations on the Independent Beauty Consultants. These obligations include, in relevant part:

A. The Independent Beauty Consultant Agrees:

1. *To promote and sell Mary Kay products® to ultimate consumers and not to sell or display those products in retail sales or service establishments.*

* * *

3. To maintain the highest standards of integrity, honesty and responsibility in dealings with the Company, consumers and other Beauty Consultants. To present Mary Kay® products in a truthful and sincere manner and hold the Company harmless from damages resulting from misrepresentations by me.
4. *To protect the Mary Kay® trademarks and trade name by obtaining the Company's written permission prior to my use in any advertising (including but not limited to the Internet) or literature other than Company-published material. I understand that display or sale of Mary Kay® products in public, retail or service establishments of any kind is inconsistent with the terms of this Agreement.*

(See Standard Mary Kay IBC Agreement, attached as Exhibit A) (emphasis added).

16. The obligations placed on the Independent Beauty Consultants by the IBC Agreement are intended to protect Mary Kay's direct sales model, which in turn maintains the integrity of the products and preserves goodwill between Mary Kay, its Independent Beauty Consultants, and the ultimate consumers who choose to buy products from Independent Beauty Consultants. Specifically, the terms of the IBC Agreement allow the Independent Beauty Consultants to obtain products from Mary Kay at wholesale prices, with the requirement that such products will be marketed by the Independent Beauty Consultants directly to ultimate consumers and not in retail sales or service establishments.

17. The IBC Agreement also places obligations on the Independent Beauty Consultant designed to protect the stature of the Mary Kay trademark. The terms of the IBC Agreement prohibit Independent Beauty Consultants 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.

3. ***The Mary Kay Satisfaction Guarantee Further Protects the Quality of Its Products, Its Business Reputation, and Its Trademark Stature***

18. Mary Kay strives to maintain its goodwill and reputation by protecting the quality of its products and associated customer service. Accordingly, Mary Kay products are covered by the Mary Kay Satisfaction Guarantee (the "Guarantee"), which states:

Mary Kay Inc. stands behind its products sold by our Mary Kay Independent Beauty Consultants. If for any reason you are not completely satisfied with any Mary Kay® product, it will be replaced without charge, exchanged or the full purchase price refunded following its return to your authorized Mary Kay Independent Beauty Consultant or, if she is no longer active, to the Company with proof of purchase.

(See the Guarantee, attached as Exhibit B). In addition, Independent Beauty Consultants agree, pursuant to the terms of the IBC Agreement, to honor the Guarantee. The IBC Agreement obligates Independent Beauty Consultants:

2. To provide each consumer with the written Mary Kay Satisfaction Guarantee and to promptly honor it upon request. I understand that Mary Kay Inc. ("Company") sponsors a complete satisfaction or money-back guarantee as to each Mary Kay® product sold by me to a consumer.

(See Exhibit A, Section A, ¶ 2).

19. Mary Kay only offers the Guarantee on the products sold by Mary Kay Independent Beauty Consultants to ultimate consumers. The Guarantee does not extend to Mary Kay products that the ultimate consumer purchases from sources other than the direct purchase from an authorized Independent Beauty Consultant. Because Mary Kay does not authorize its Independent Beauty Consultants to sell its products to anyone other than ultimate consumers, and because Independent Beauty Consultants are prohibited from selling Mary Kay products in retail sales or service establishments, including Internet websites, Mary Kay products sold in or through these retail establishments are not covered by the Guarantee.

4. *The Mary Kay Marks Have Earned A Highly Distinctive and Famous Status*

20. As a result of its long and continuous use and vigorous protection of its business model and high quality products, the Mary Kay trademark has earned and maintains a highly distinctive status. Mary Kay develops, manufactures, and markets its products in the United States and worldwide, under its distinctive and famous MARY KAY marks (collectively, the “Mary Kay Marks”). Mary Kay owns the Mary Kay Marks, and the corresponding United States registrations listed below, for use with its cosmetic products, skin care products, and other related goods and services.

<u>Mark:</u>	<u>International Class(es) – First Use in Commerce</u>	<u>Registration No.</u>	<u>Filing - Registration Dates</u>
MARY KAY (Stylized)	Class 3 – At least as early as 9/15/63	817516	10/19/64 – 10/25/66
MARY KAY	Class 3 – At least as early as 5/03/76	1070841	6/01/76 – 8/09/77
MARY KAY (Stylized)	Class 3 – At least as early as 5/25/88	1545983	7/22/88 – 7/04/89
MARY KAY	Class 3 – At least as early as 1963; Class 8 – At least as early as 1990; Class 9 – At least as early as 1990; Class 16 – At least as early as 1980; Class 21 – At least as early as 1990	1842599	8/07/92 – 7/05/94
MARY KAY (Stylized)	Class 3 – At least as early as 1988; Class 8 – At least as early as 1990; Class 9 – At least as early as 1990;	2542184	10/30/99 – 2/26/02

<u>Mark:</u>	<u>International Class(es) – First Use in Commerce</u>	<u>Registration No.</u>	<u>Filing - Registration Dates</u>
	Class 16 – At least as early as 1989; Class 21 – At least as early as 1990		

21. Mary Kay owns the above registrations, which are valid and subsisting. Registration Numbers 1,070,841, 1,545,983, and 1,842,599 are incontestable in accordance with Section 15 of the Lanham Act, 15 U.S.C. § 1065. (See Certificates of Registration for Mary Kay Marks 1,070,841, 1,545,983, and 1,842,599, attached as Exhibit C). Mary Kay also holds registered trademarks for its individual products and certain product lines, including, but not limited to MK Signature, Timewise, and Velocity. (See Certificates of Registration for these Mary Kay Marks, attached as Exhibit D).

22. Significantly, Mary Kay initially adopted the MARY KAY mark, as early as 1963, and has continuously used the Mary Kay Marks in connection with the sale of its products. As a result of Mary Kay's early adoption and long-established use, the Mary Kay Marks are widely recognized and relied upon by the public in Texas and throughout the United States to identify Mary Kay, Mary Kay products, the personal customer service that accompanies Mary Kay products, and to distinguish Mary Kay products and services from the products or services of others. Moreover, Mary Kay has an extensive media campaign, and Mary Kay uses the Mary Kay Marks in various media formats, including on the Internet, to promote its Mary Kay products. Mary Kay owns the domain www.marykay.com.

23. As a result of the continuous usage and promotion of the Mary Kay Marks, Mary Kay has acquired, in addition to the rights established through registration, recognized common-

law rights in the Mary Kay Marks. Mary Kay has also developed valuable goodwill in the Mary Kay Marks.

B. The Weber Defendants' Willful and Intentional Misconduct

1. The Webers Intentionally Violate the Mary Kay IBC Agreement

24. On or about January 27, 2000, Defendant Amy Weber signed an IBC Agreement that was accepted in Dallas, Texas by Mary Kay, allowing Ms. Weber to become a Mary Kay Independent Beauty Consultant. Like all other Independent Beauty Consultants, Ms. Weber agreed to sell Mary Kay products directly to ultimate consumers and not to sell or display the Mary Kay products in retail sales outlets. Ms. Weber further agreed to protect the Mary Kay trademarks and trade name by obtaining Mary Kay's permission prior to using the Mary Kay name in any advertising or literature. By agreeing to follow the Mary Kay business model, Ms. Weber was entrusted with the right to purchase and sell Mary Kay products and she was offered valuable education that might assist her to embark on a successful business.

25. In June 2005, Mary Kay learned that Ms. Weber was, in concert with her husband Scott Weber, violating the terms of her IBC Agreement by improperly advertising and selling Mary Kay products on the Internet auction website, eBay. The Mary Kay products were being sold under the username "scottw815." Upon learning of the Webers' improper and unauthorized sales of its products on eBay, Mary Kay contacted Ms. Weber to inform her that this activity violated the terms of her IBC Agreement and to request that she remove the Mary Kay products listed on eBay. Ms. Weber failed to respond to Mary Kay's request. By mid August, the Webers had a remarkable 1,733 Mary Kay items listed for sale on eBay. At this time, it was clear that Ms. Weber had no intention of honoring the IBC Agreement, choosing instead to violate the IBC Agreement and Mary Kay's trust and sell Mary Kay products by any means that she and her

husband, Scott Weber, saw fit. Mary Kay was forced to terminate Ms. Weber's IBC Agreement, effective September 17, 2005. (See Letter Terminating Amy Weber's IBC Agreement, dated Aug. 19, 2005, attached as Exhibit E).

26. Notwithstanding the Webers' unabashed and intentional breach of the IBC Agreement, Mary Kay still honored its obligations under the IBC agreement. Mary Kay offered to repurchase certain Mary Kay products purchased by Ms. Weber in the proceeding twelve (12) months to avoid causing her any financial hardship from her purchase of Mary Kay products.¹ (Exhibit D). Not surprisingly, the Webers ignored Mary Kay's offer.

2. *The Weber Defendants Continue the Unauthorized Internet Retail Sale of Mary Kay Products*

27. Following the termination of Ms. Weber's IBC Agreement, the Webers created Defendant Touch of Pink Cosmetics for the stated purpose of selling Mary Kay products. Touch of Pink Cosmetics is an interactive Internet website, under the domain www.touchofpinkcosmetics.com, where customers throughout the United States and the world can purchase the products offered for sale by the Weber Defendants. On information and belief, Scott Weber owns the Touch of Pink Cosmetics domain.

28. The Weber Defendants advertise and sell Mary Kay products on the Touch of Pink website without authorization or consent from Mary Kay. Specifically, the Touch of Pink website unlawfully advertises itself as "your destination for all your favorite Mary Kay Products at 50% - 75% off Retail." (See Screenshot from Touch of Pink website, attached as Exhibit F).

¹ According to the terms of the IBC Agreement, Mary Kay agrees "[t]o repurchase, upon termination of this Agreement, at ninety percent (90%) of [Beauty] Consultant's original net cost, original and unused Section 1 products, provided such items were purchased by [Beauty] Consultant from [Mary Kay] within one (1) year prior to return." (See Exhibit A, Section B, ¶ 7).

29. In addition to the Touch of Pink website, the Weber Defendants continue the unauthorized sale of Mary Kay products on eBay. The Weber Defendants created a “store” on eBay (the “eBay Store”).² The Weber Defendants also operate and maintain the eBay Store under the user name “scottw815.” Like the Touch of Pink website, the Weber Defendants’ eBay Store is an interactive Internet website where customers throughout the world can purchase the products offered for sale by the Weber Defendants. The Weber Defendants sell only Mary Kay products on their eBay Store, and they unlawfully market the eBay Store as “your destination for all your favorite Mary Kay Products at 50% - 75% off Retail.” (See Screenshot from eBay Store, attached as Exhibit G). As recently as April 22, 2008, the Weber Defendants unlawfully marketed the eBay Store as “your one stop shop for ALL your **Mary Kay** needs!” (See Screenshot from eBay Store, attached as Exhibit H) (emphasis in original).

3. *The Weber Defendants Induce Current Independent Beauty Consultants to Breach Their IBC Agreements*

30. Amy Weber is no longer a Mary Kay Independent Beauty Consultant. Significantly, Defendants no longer have the ability to purchase Mary Kay products directly from Mary Kay. As a former Independent Beauty Consultant, Ms. Weber is aware of the terms of the Mary Kay standardized IBC Agreement. She is also aware that all Independent Beauty Consultants must enter into the standard IBC Agreement before becoming Mary Kay Independent Beauty Consultants. Indeed, the Weber Defendants actually reference the Mary Kay IBC Agreement on the Touch of Pink website.³

² The eBay Store is located at www.stores.ebay.com/touchofpink.

³ As previously noted in footnote 1, Mary Kay, by the terms of the IBC Agreement, will repurchase its products when an IBC Agreement is terminated. On the Touch of Pink website, Defendants reference this exact policy stating, “[w]e buy all section 1 items at 1/2 of wholesale. The products must be new, never been used or tested. Please keep in mind too, if you product is less than 12 months old, you can send them back to Mary Kay Inc for 90% of wholesale.” (See Touch of Pink website, located at www.touchofpinkcosmetics.com/liquidating.html).

31. With full knowledge of the Mary Kay IBC Agreement, the Weber Defendants' willfully and intentionally solicit current Mary Kay Independent Beauty Consultants to sell Mary Kay products to Touch of Pink in breach of their IBC Agreements. Specifically, the Touch of Pink website identifies its owners as "former Mary Kay consultants who have liquidated our inventory *and are now helping others who...simply want to balance their current inventory.*" (See Screenshot from Touch of Pink website, attached as Exhibit I) (emphasis added). The website further induces Independent Beauty Consultants by stating, "[w]e offer you [current Independent Beauty Consultants] an outlet to reduce your slow moving product. In return, you can balance your inventory and implement profit making strategies." (*Id.*). In addition, e-mail newsletters sent by Touch of Pink include the same solicitation of Independent Beauty Consultants.

32. The Weber Defendants' business strategy appears to be the marketing and sale of Mary Kay products at a discounted price. Because the Weber Defendants do not have the ability to purchase Mary Kay products directly from Mary Kay, the success of this business strategy necessarily requires the calculated inducement of current Independent Beauty Consultants to breach their IBC Agreements with Mary Kay. According to the Weber Defendants' own statements -- estimating sales from the Touch of Pink website and the eBay store to reach \$1.5 to \$2 million in 2007 -- the Weber Defendants are successfully inducing current Independent Beauty Consultants to breach their IBC Agreements. (See Internet Article, titled, *Mary Kay Retailer Increases Sales 20X with ProStores*, attached as Exhibit J). These willful acts by Defendants constitute tortious interference with existing contractual relationships between Mary Kay and its current Independent Beauty Consultants.

4. *Certain Independent Beauty Consultants Knowingly Breach Their IBC Agreements With Mary Kay*

33. Although most of the more than 1.8 million Mary Kay independent sales force members around the world conduct their independent Mary Kay businesses with honesty and integrity, on information and belief, certain Independent Beauty Consultants are knowingly violating the terms of their IBC Agreements with Mary Kay. In so doing, these Independent Beauty Consultants are assisting with and participating in the Weber Defendants' unlawful activities. Because these participating Independent Beauty Consultants are not yet identified, they are referred to herein as "Participating Independent Beauty Consultants."

5. *The Weber Defendants Interfere With Mary Kay's Prospective Relationships*

34. The Internet retail sale of Mary Kay products undermines the direct sales model carefully developed by Mary Kay for the marketing, sale, and distribution of its products. Through the Touch of Pink website and the eBay Store, the Weber Defendants unlawfully mass market Mary Kay products across the globe. Notably, the Weber Defendants' websites specifically advertise the shipment of Mary Kay products to any location in the world.⁴

35. The Weber Defendants understand that Mary Kay's direct sales business model contemplates the addition of new Independent Beauty Consultants to sell the Mary Kay products. Defendants' unauthorized Internet retail sale of Mary Kay products to a mass market has deterred and continues to deter Mary Kay's prospective Independent Beauty Consultants from entering into the IBC Agreements with Mary Kay. On information and belief, the Weber Defendants' actions are not only harming Mary Kay and its Independent Beauty Consultants, the

⁴ On information and belief, Defendants have shipped Mary Kay products to residents throughout the United States, including Texas, and at least fourteen (14) other countries.

Weber Defendants are tortiously interfering with Mary Kay's prospective relationships with potential Independent Beauty Consultants.

6. *The First Sale of Mary Kay Products is Fraudulently Induced and Invalid*

36. As explained above, the Weber Defendants obtain Mary Kay products in an unlawful matter from Participating Independent Beauty Consultants by inducing the Independent Beauty Consultants to purchase products from Mary Kay and sell them to Touch of Pink in violation of the IBC Agreements. On information and belief, the Participating Independent Beauty Consultants who sell Mary Kay products to Touch of Pink purchase products from Mary Kay in knowing violation of their IBC Agreements and with the intent to aid in the Weber Defendants' unlawful sale of these products. Accordingly, the first sale of the Mary Kay products, *i.e.* from Mary Kay to Participating Independent Beauty Consultants, is fraudulently induced and invalid.

7. *The Weber Defendants Continue the Unauthorized Use of the Mary Kay Marks and Name*

37. The Weber Defendants continue to use the Mary Kay Marks and name without authorization or consent from Mary Kay. The Weber Defendants' unlawful and unauthorized use of the Mary Kay Marks and name harms not only Mary Kay, but also consumers who are confused or deceived into purchasing products through the Touch of Pink website and the eBay Store believing they are purchasing guaranteed products from an authorized Mary Kay Independent Beauty Consultant. The Weber Defendants' use in commerce of the Mary Kay Marks and name began more than forty years after Mary Kay adopted and began using the MARY KAY mark. As a result, the Weber Defendants' unauthorized use began after the Mary Kay Marks and name became famous.

38. As previously noted, the Weber Defendants hold themselves out as a one-stop shop for all Mary Kay products. Specifically, the Touch of Pink website and the Weber Defendants' eBay Store proclaim to be "your destination for all your favorite Mary Kay Products at 50% - 75% off Retail." Moreover, the Weber Defendants' eBay Store previously claimed to be "your one stop shop for ALL your **Mary Kay** needs!" Defendants' false and misleading representations cause confusion as to the affiliation, connection, or association between the Weber Defendants and Mary Kay, as well as to the sponsorship or approval of the Weber Defendants' goods, services, and commercial activities by Mary Kay.

39. On information and belief, the Weber Defendants also have caused initial interest confusion for Mary Kay consumers through their improper advertisement on search engines. Specifically, the Weber Defendants have purchased and continue to purchase key word searches on Google and other search engines using the Mary Kay Marks and name. As a result, when a consumer performs a search using the term "Mary Kay," the Touch of Pink website appears in the "Sponsored Link" advertisement. Moreover, the Touch of Pink Sponsored Link advertisement states, "**MaryKay** Sale 50% Off." (See Screenshot from Google Search website, attached as Exhibit K) (emphasis in original). The MARY KAY mark is bold, underlined, and in larger font than the rest of the ad. Because the Touch of Pink sponsored link advertisement does not clearly identify its source, consumers are likely to believe falsely that the Touch of Pink website is sponsored by, affiliated with, or otherwise approved by Mary Kay. By unlawfully creating a false impression of affiliation or sponsorship in this manner, the Weber Defendants are diverting consumers from authorized Mary Kay websites.

40. In addition, the Weber Defendants misrepresent that all products sold on the Touch of Pink website are in fact products manufactured by Mary Kay. Although the vast

majority of products sold on the Touch of Pink website appear to be products manufactured by Mary Kay, the Weber Defendants have recently started selling sterling silver jewelry and a brand of mineral-based cosmetics called "Sheer Miracle."

41. Sheer Miracle is not affiliated with Mary Kay in any way. On information and belief, because of the manner in which Sheer Miracle products are marketed, sold, and delivered to consumers by the Weber Defendants, consumers are confused or are likely to be confused as to the origin, sponsorship, or approval of the Sheer Miracle products sold by the Weber Defendants. More specifically, through the Weber Defendants' false and misleading statements, consumers are likely to believe falsely that the Sheer Miracle product is manufactured by or otherwise sponsored by, affiliated with, or approved by Mary Kay.

42. Defendants' unauthorized use of the Mary Kay Marks and name has confused or is likely to confuse consumers as to the affiliation, connection, or association of Defendants with Mary Kay, as well as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Mary Kay. Mary Kay has no control over the quality of goods sold by Defendants or over the quality of customer service accompanying these goods. As a result of the confusion that has been or is likely to be engendered by Defendants' activities, the Mary Kay Marks and associated valuable goodwill are not under the control of Mary Kay and are therefore being irreparably harmed.

43. Upon information and belief, Defendants had knowledge that the trademark laws of the United States protect the Mary Kay Marks. Defendants nevertheless, willfully infringed the Mary Kay Marks. On information and belief, Defendants willfully intended to trade on the recognition of the famous Mary Kay Marks and name.

C. The Weber Defendants' Misconduct Causes Mary Kay Substantial and Irreparable Harm

44. The Weber Defendants' misconduct has harmed and continues to harm Mary Kay, its Independent Beauty Consultants, and its trademarks. Specifically, the continued willful and deceitful acts of the Weber Defendants has resulted in the loss of business, including the actual loss of valuable business relationships existing between Mary Kay and its Independent Beauty Consultants, harm to its reputation and goodwill. On information and belief, the intentional interference by the Weber Defendants with Mary Kay's contractual relationships also has resulted in the loss of sales opportunities for other Independent Beauty Consultants. The loss of sales opportunities for its Independent Beauty Consultants is detrimental to Mary Kay and its business model.

45. Moreover, the Weber Defendants' unauthorized use of the Mary Kay Marks constitutes a misappropriation of Mary Kay's exclusive property right in its trademarks. On information and belief, the Weber Defendants' misappropriation of the Mary Kay Marks and name has confused consumers and damaged Mary Kay's business reputation and the goodwill it has established through its trademarks.

**V.
CAUSES OF ACTION**

COUNT I: Tortious Interference With An Existing Contractual Relationship

46. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

47. The Weber Defendants, through Ms. Weber's prior relationship with Mary Kay as a Mary Kay Independent Beauty Consultant, have knowledge of Mary Kay's established contractual relationships with its current Independent Beauty Consultants, which prevent the

current Independent Beauty Consultants from selling Mary Kay products to anyone other than ultimate consumers. The Weber Defendants have further knowledge that current Independent Beauty Consultants are prohibited from selling Mary Kay products through retail outlets, including Internet websites.

48. The Weber Defendants have wrongfully, maliciously, and tortiously interfered with Mary Kay's contractual relationships by soliciting, encouraging, and inducing current Independent Beauty Consultants to breach their IBC Agreements with Mary Kay.

49. The Weber Defendants have no privilege or justification for their actions.

50. The Weber Defendants' actions proximately caused Mary Kay's loss. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief and damages in an amount to be proved at trial.

COUNT II: Tortious Interference With A Prospective Relationship

51. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

52. The Weber Defendants, through Ms. Weber's prior relationship with Mary Kay as a Mary Kay Independent Beauty Consultant, have knowledge that Mary Kay's direct sales business model contemplates the addition of new Independent Beauty Consultants to sell the Mary Kay products. Moreover, the Weber Defendants are aware that their unauthorized retail sale of Mary Kay products to a mass market has deterred and continues to deter new Independent Beauty Consultants from becoming Mary Kay Independent Beauty Consultants.

53. The Weber Defendants have wrongfully, maliciously, and tortiously interfered with Mary Kay's relationships with prospective Independent Beauty Consultants through their unauthorized sale of Mary Kay products.

54. The Weber Defendants have no privilege or justification for their actions.

55. The Weber Defendants' actions proximately caused Mary Kay's loss. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief and damages in an amount to be proved at trial.

COUNT III: Unfair Competition Under The Lanham Act

56. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

57. The Weber Defendants' actions constitute unfair competition in violation of 15 U.S.C. § 1125(a).

58. On information and belief, the Weber Defendants' unfair competition has been willful and malicious, thus making this an exceptional case under 15 U.S.C. § 1117(a).

59. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief and damages in an amount to be proved at trial, including enhanced damages as allowed by law, as well as recovery of all reasonable attorneys' fees and costs incurred in connection with this action.

COUNT IV: Passing Off Under The Lanham Act

60. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

61. The conduct of the Weber Defendants as described herein constituted, and continues to constitute, passing off under 15 U.S.C. § 1125(a).

62. On information and belief, the Weber Defendants' passing off/unfair competition has been willful and malicious, thus making this an exceptional case under 15 U.S.C. § 1117(a).

63. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief, damages in an amount to be proved at trial, including enhanced damages as allowed by law, as well as recovery of all reasonable attorneys' fees and costs incurred in connection with this action.

COUNT V: Trademark Infringement Under The Lanham Act

64. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

65. The conduct of the Weber Defendants as described herein constituted, and continues to constitute, trademark infringement under the Lanham Act, codified at 15 U.S.C. § 1114.

66. On information and belief, the Weber Defendants' actions have been willful, with full knowledge of Mary Kay's rights, and with an intent to trade on Mary Kay's goodwill in such registered trademarks, thus making this an exceptional case under 15 U.S.C. § 1117(a).

67. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief, damages in an amount to be proved at trial, including enhanced damages as allowed by law, as well as recovery of all reasonable attorneys' fees and costs incurred in connection with this action.

COUNT VI: Unfair Competition Under Texas Common Law

68. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

69. The Weber Defendants' conduct constitutes unfair competition under Texas common law.

70. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief and damages in an amount to be proved at trial.

COUNT VII: Trademark Infringement Under Texas Common Law

71. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

72. The Weber Defendants' conduct constitutes trademark infringement under Texas common law.

73. As a result of the Weber Defendants' wrongful conduct, Mary Kay is entitled to the injunctive remedies specified in the Prayer for Relief and damages in an amount to be proved at trial.

COUNT VIII: Unjust Enrichment

74. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

75. The Weber Defendants have been unjustly enriched, to Mary Kay's detriment, by the unauthorized use of the Mary Kay name and mark. The Weber Defendants have willfully and knowingly circumvented the Mary Kay direct sales model by improperly obtaining Mary

Kay products through the tortious interference with Mary Kay contracts. The Weber Defendants have profited from the improper Internet sale of these Mary Kay products relying on Mary Kay's good reputation associated with its mark.

76. As a result of these actions, Mary Kay is entitled to damages from the Weber Defendants' unjust enrichment.

COUNT IX: Injunctive Relief

77. Mary Kay hereby alleges and incorporates each and every allegation set forth in paragraphs 1 through 45 into this cause of action.

78. The Weber Defendants have damaged Mary Kay, and are continuing to damage Mary Kay, by the willful and unlawful acts complained of herein. Unless the Weber Defendants are restrained by this Court, they will cause irreparable injury to Mary Kay for which there is no adequate remedy at law.

VI. MOTION FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY

79. Pursuant to the Federal Rules of Civil Procedure, Mary Kay requests leave of the Court and an order pursuant to Rule 26(d)(1) to conduct videotaped oral depositions and to subpoena and request documents and other tangible items in connection therewith on an expedited basis before the parties have conferred as required by Rule 26(f) and prior to the preliminary injunction hearing in this case so that such hearing will be meaningful. In addition, Mary Kay requests leave of the Court and an order to conduct expedited discovery so that Mary Kay can properly identify the Participating Independent Beauty Consultants, who are also potential defendants to this lawsuit, prior to the preliminary injunction hearing and for purposes of judicial economy. Specifically, Mary Kay requests leave to conduct the depositions of

Defendant Amy Weber and Defendant Scott Weber and to request documents to be produced in connection with this deposition on five days notice after the Defendants answer the lawsuit.

80. In the alternative, Mary Kay requests an expedited Rule 16 scheduling conference.

**VII.
PRAYER FOR RELIEF**

For the reasons stated above, Plaintiff Mary Kay Inc. prays:

A. that the Weber Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with the Weber Defendants, be preliminarily and permanently enjoined and restrained from competing unfairly with Mary Kay, interfering with Mary Kay's existing and prospective relationships, and from using the Mary Kay Marks in any manner whatsoever that is likely to cause confusion, including:

1. interfering, or acting with others to interfere, with Mary Kay's existing contractual relationships with its Independent Beauty Consultants and its prospective contractual relationships;
2. continuing to solicit Mary Kay Independent Beauty Consultants to sell Mary Kay products to Defendants in breach of the IBC Agreements and continuing to purchase Mary Kay products from current Independent Beauty Consultants;
3. continuing to operate the website www.touchofpinkcosmetics.com or any other website that contains infringing or otherwise unlawful content;
4. continuing to operate the eBay store <http://stores.ebay.com/Touch-of-Pink-Cosmetics>, any other eBay store or similar auction site that contains infringing or otherwise unlawful content;
5. continuing to buy advertisements from search engines using the Mary Kay trade name allowing Touch of Pink to appear in the "sponsored link" section of these searching engines, and thus, causing initial interest confusion for Mary Kay consumers;
6. continuing to use the Mary Kay Marks in any advertisements, including, but not limited to, "sponsored link" advertisements on Internet search engines;

7. falsely or misleadingly representing themselves and their activities, goods, and services to be sponsored by, approved by, or affiliated with Mary Kay;
8. falsely or misleadingly representing any product of Defendants or others as originating from, being sponsored by, or approved by Mary Kay;
9. committing any other acts or making any other representations, express or implied, that would infringe any of Mary Kay's trademark rights, or that would confuse, mislead, or deceive consumers as to Defendants' sponsorship of, approval by, or affiliation with Mary Kay;
10. continuing the sale and/or distribution of any unlawfully obtained Mary Kay products; and
11. inducing, assisting, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (1)-(11) above;

B. for an award of damages sustained as a result of the Weber Defendants' activities, trebled as allowed by law;

C. for an award of exemplary damages sustained as a result of the Weber Defendants' activities;

D. for an accounting of the Weber Defendants' sales resulting from the Weber Defendants' activities and unjust enrichment, and that their profits be paid over to Mary Kay, increased as the court finds to be just under the circumstances of this case and that the unlawfully obtained Mary Kay products in the Weber Defendants' possession, custody, or control be disposed of appropriately as the court finds to be just under the circumstances of this case;

E. for an award of attorneys' fees and costs as allowed by law;

F. for an award of prejudgment and post-judgment interest on all sums awarded; and

G. for such other and further relief as the court may deem just, equitable and appropriate.

**VIII.
JURY DEMAND**

Pursuant to Rule 38(b), Fed. R. Civ. P., Mary Kay demands a trial by jury.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

Linda L. Addison
Linda L. Addison
State Bar No. 00903700
Federal ID No. 3430
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Telecopier: (713) 651-5246

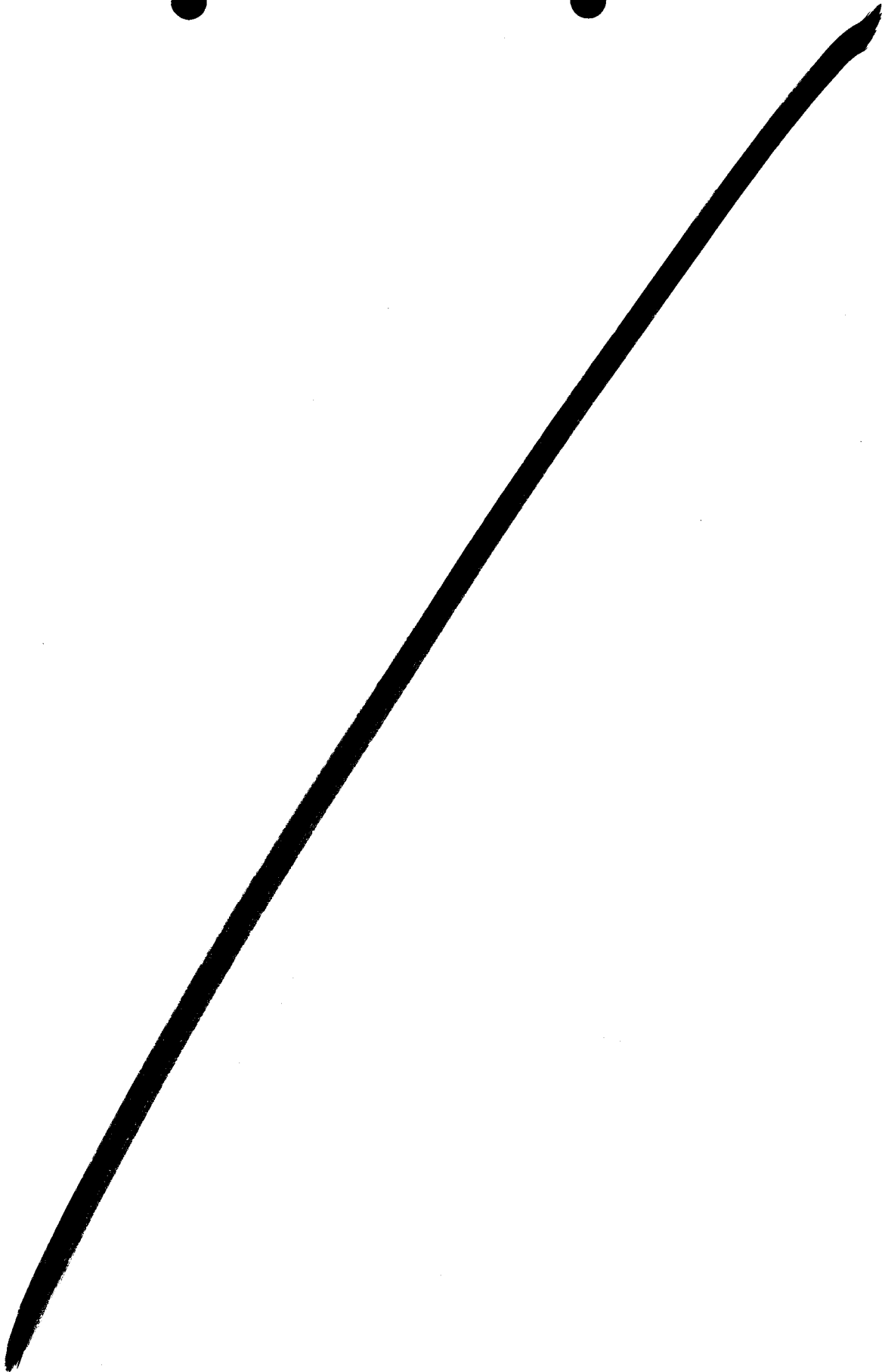
ATTORNEY IN CHARGE FOR PLAINTIFF
MARY KAY INC.

OF COUNSEL:

Norlynn B. Price
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
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Richard J. Groos
Sara Wolf
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
Telephone: (512) 418-3000
Telecopier: (512) 474-7577



Independent Beauty Consultant Agreement General Terms and Conditions

A. THE INDEPENDENT BEAUTY CONSULTANT AGREES:

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

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

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

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

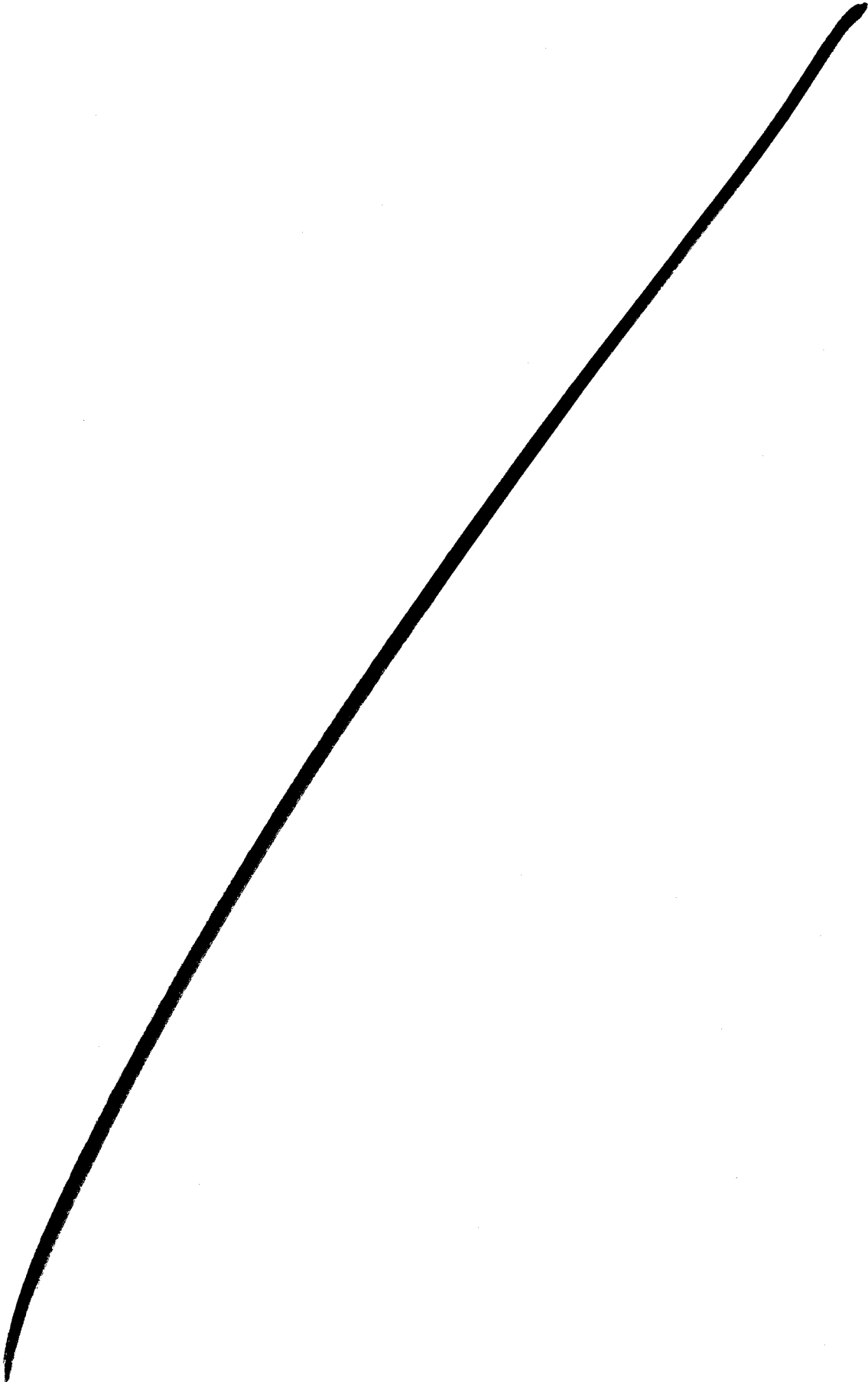
4. No geographical territories or limits concerning sales or recruiting within the United States, Puerto Rico, the U.S. Virgin Islands and Guam are imposed on Beauty Consultant.
5. Company reserves no right of control or direction of Beauty Consultant's activities, other than the right to question results.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

This Agreement is subject to acceptance by Company at its corporate headquarters in Dallas, Texas, through issuance of a Notice of Acceptance. Such acceptance is conditioned upon receipt of a Starter Kit by Beauty Consultant. This Agreement shall be governed by the laws of the State of Texas as to all matters. The parties further agree that if any dispute or controversy arises between them concerning any matter relating to this Agreement that any issues which either party may elect to submit for legal jurisdiction shall be submitted to the jurisdiction of the courts of the State of Texas and the parties agree that the proper venue shall be Dallas, Dallas County, Texas.

This Agreement is not subject to alteration, modification or change, except in writing, signed by an authorized executive of the Company and shall not be deemed to be changed, modified or altered by reason of any advice, suggestions, guides or sales aids furnished by the Company to the Beauty Consultant. This Agreement shall be effective from the date of acceptance until December 31 of the same year and shall thereafter be automatically renewed each January 1, for additional terms of one year each, provided that the Agreement may be terminated by either party effective immediately for any breach of its provisions or by either party at any time during the initial term or any renewal term by not less than thirty (30) days written notice.

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

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



Satisfaction Guarantee

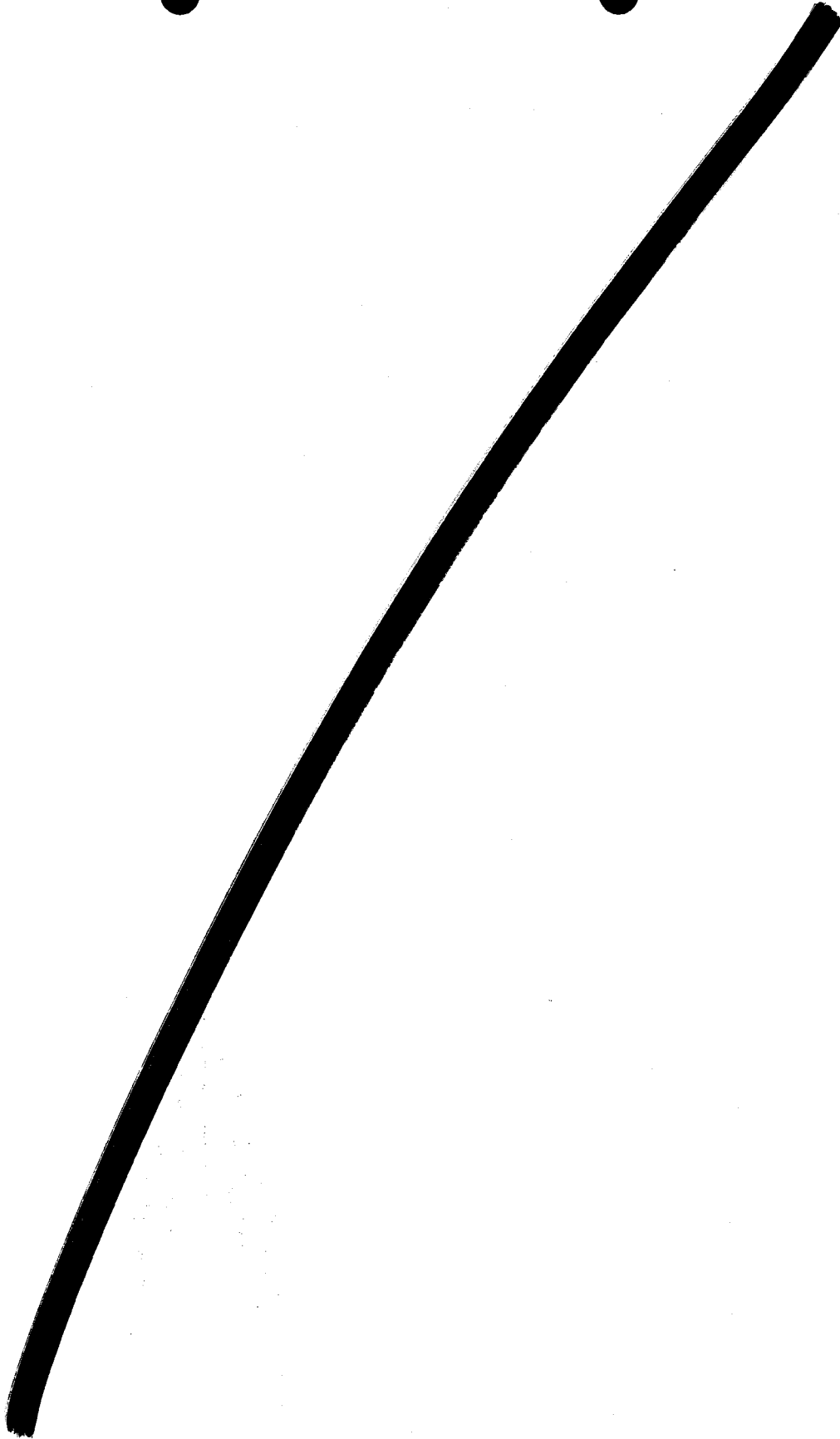
Mary Kay Inc. stands behind its products sold by our Mary Kay Independent Beauty Consultants. If for any reason you are not completely satisfied with any Mary Kay® product, it will be replaced without charge, exchanged or the full purchase price refunded following its return to your authorized Mary Kay Independent Beauty Consultant or, if she is no longer active, to the Company with proof of purchase.

In contrast to laws applying to purchases over \$25 which only give you a limited time period within which to cancel your order and return unused products (which you may, of course, do by utilizing the Notice of Cancellation form furnished you in accordance with governmental regulations), the Mary Kay Guarantee assures that you, as a consumer, have protection of your purchase price, without limit as to amount of purchase or time for return and whether or not returned products have been partially used.

Please contact the Customer Satisfaction Department for instructions on how to obtain an exchange or refund.

Mary Kay Inc.
1-800-MARY KAY
(1-800-627-9529)

This form is made available by Mary Kay Inc. to authorized Mary Kay Independent Beauty Consultants selling Mary Kay® products.



Int. Cl.: 3

Prior U.S. Cl.: 51, 52

United States Patent Office

Reg. No. 1,070,841

Registered Aug. 9, 1977

TRADEMARK

Principal Register

MARY KAY

Mary Kay Cosmetics, Inc. (Texas corporation)
8900 Carpenter Freeway
Dallas, Tex. 75247

For: HAIR CARE PRODUCTS, SPECIFICALLY
HAIR SHAMPOOS, HAIR CONDITIONERS, HAIR
SPRAYS, AND SETS THEREOF, in CLASS 3 (U.S.
CLS. 51 and 52).

First use at least as early as Apr. 4, 1976; in commerce
at least as early as May 3, 1976.

"Mary Kay" is the first two names of Mary Kay Ash,
the founder and chairman of the board of Mary Kay
Cosmetics, Inc., whose consent is of record.

Owner of Reg. Nos. 817,516, 817,933, and 1,022,401.

Ser. No. 88,946, filed June 1, 1976.

E. P. HARAB, Examiner

Int. Cl.: 3

Prior U.S. Cls.: 51 and 52

United States Patent and Trademark Office

Reg. No. 1,545,983

Registered July 4, 1989

**TRADEMARK
PRINCIPAL REGISTER**

MARY KAY

MARY KAY COSMETICS, INC. (TEXAS CORPORATION)
8787 STEMMONS FREEWAY
DALLAS, TX 75247

FOR: COSMETICS, SPECIFICALLY CLEANSING CREAM, FRESHENER, MOISTURIZER, HAND CREAM, CLEANSING GEL, COLOGNE, EYE CREAM CONCENTRATE, WATERPROOF MASCARA, FOUNDATION, TRANSLUCENT POWDER, HAIR SHAMPOO, NIGHT CREAM, MOISTURE RICH MASK, BODY LOTION, SUNSCREEN LOTION, PURIFYING BAR, LIP GLOSS, EYE SHADOW, CREAM BLUSH, ANTI-

AGING COMPLEX, AND PROTEIN CONDITIONER, IN CLASS 3 (U.S. CLS. 51 AND 52).
FIRST USE 5-25-1988; IN COMMERCE 5-25-1988.

OWNER OF U.S. REG. NOS. 817,516, 1,312,253 AND OTHERS.

THE NAME "MARY KAY" IN THE MARK IS THE FIRST AND SECOND NAMES OF "MARY KAY ASH", A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.

SER. NO. 741,595, FILED 7-22-1988.

MICHAEL MURPHY, EXAMINING ATTORNEY

Int. Cls.: 3, 8, 9, 16 and 21

Prior U.S. Cls.: 2, 21, 23, 29, 36, 37, 38, 51 and 52

United States Patent and Trademark Office

Reg. No. 1,842,599

Registered July 5, 1994

**TRADEMARK
PRINCIPAL REGISTER**

MARY KAY

MARY KAY COSMETICS, INC. (DELAWARE
CORPORATION)
8787 STEMMONS FREEWAY
DALLAS, TX 75247

FOR: BODY CARE PRODUCTS; NAMELY, BUFFING CREAMS, CLEANSING GELS, BODY LOTIONS, DUSTING POWDER; HAIR CARE PRODUCTS; NAMELY, SHAMPOOS, CONDITIONERS, STYLING GELS, FINISHING SPRAYS AND STYLING MOUSSE; SKIN CARE PRODUCTS; NAMELY, CLEANSING CREAMS, CLEANSING BARS, FACIAL SOAPS, FACIAL MOISTURE AND REVITALIZING MASKS, TONERS, SHAVE CREAMS, MOISTURIZERS, OIL CONTROL LOTIONS, OIL ABSORBERS, HAND CREAMS, CREAM AND LIQUID FOUNDATIONS, SKIN CREAMS; GLAMOUR AND BEAUTY PRODUCTS; NAMELY, EYE COLORS, EYE DEFINING PENCILS, EYEBROW PENCILS, MASCARA, LIPSTICKS, LIP GLOSS, LIP LINER PENCILS, CHEEK COLORS, ROUGE, LOOSE POWDER, PRESSED POWDER, FACIAL HIGHLIGHTER, BLEMISH CONCEALERS, NAIL CARE PREPARATIONS, NAIL COLORS; SUNSCREEN AND SUNBLOCK PREPARATIONS, TANNING LOTIONS AND NON-MEDICATED LIP PROTECTOR PREPARATIONS; AND FRAGRANCE PRODUCTS; NAMELY, COLOGNES AND COLOGNE SPRAYS, AND EMERY BOARDS, IN CLASS 3 (U.S. CLS. 51 AND 52).

FIRST USE 0-0-1963; IN COMMERCE 0-0-1963.

FOR: MANICURE IMPLEMENTS; NAMELY, NAIL BUFFERS, CUTICLE PUSHERS, IN CLASS 8 (U.S. CL. 23).

FIRST USE 0-0-1990; IN COMMERCE 0-0-1990.

FOR: AUDIOVISUAL SALES AIDS FOR THOSE ENGAGED IN THE PROMOTION AND SALE OF COSMETICS, SKIN CARE, GLAMOUR AND LIKE PRODUCTS; NAMELY, AUDIOCASSETTE AND VIDEOCASSETTE TAPES FEATURING SALES TIPS, ADVICE AND TRAINING AND MOTIVATIONAL TOPICS, IN CLASS 9 (U.S. CLS. 21 AND 36).

FIRST USE 0-0-1990; IN COMMERCE 0-0-1990.

FOR: PRINTED BUSINESS SUPPLIES AND SALES AIDS FOR THOSE ENGAGED IN THE PROMOTION AND SALE OF COSMETICS, SKIN CARE, GLAMOUR AND LIKE PRODUCTS; NAMELY, BUSINESS ORGANIZER FOLDERS, LABELS, DECALS, GLAMOUR SHADE GUIDES, SALES FLIP CHARTS, PROMOTIONAL DECALS, PLANNING SHEETS, INSTRUCTIONAL BROCHURES, AND MAGAZINES AND PAMPHLETS CONTAINING COSMETIC, SKIN CARE, BEAUTY AND RELATED TOPICS; DISPOSABLE PAPER FACIAL CLOTHS; PLASTIC AND PAPER COSMETIC BAGS SOLD EMPTY, IN CLASS 16 (U.S. CLS. 37 AND 38).

FIRST USE 0-0-1980; IN COMMERCE 0-0-1980.

FOR: COSMETIC TRAYS AND CADDYS, LIPSTICK HOLDERS, EYELINER BRUSHES, RETRACTABLE EYE AND LIP BRUSHES, COSMETIC BRUSHES AND COSMETIC

2

1,842,599

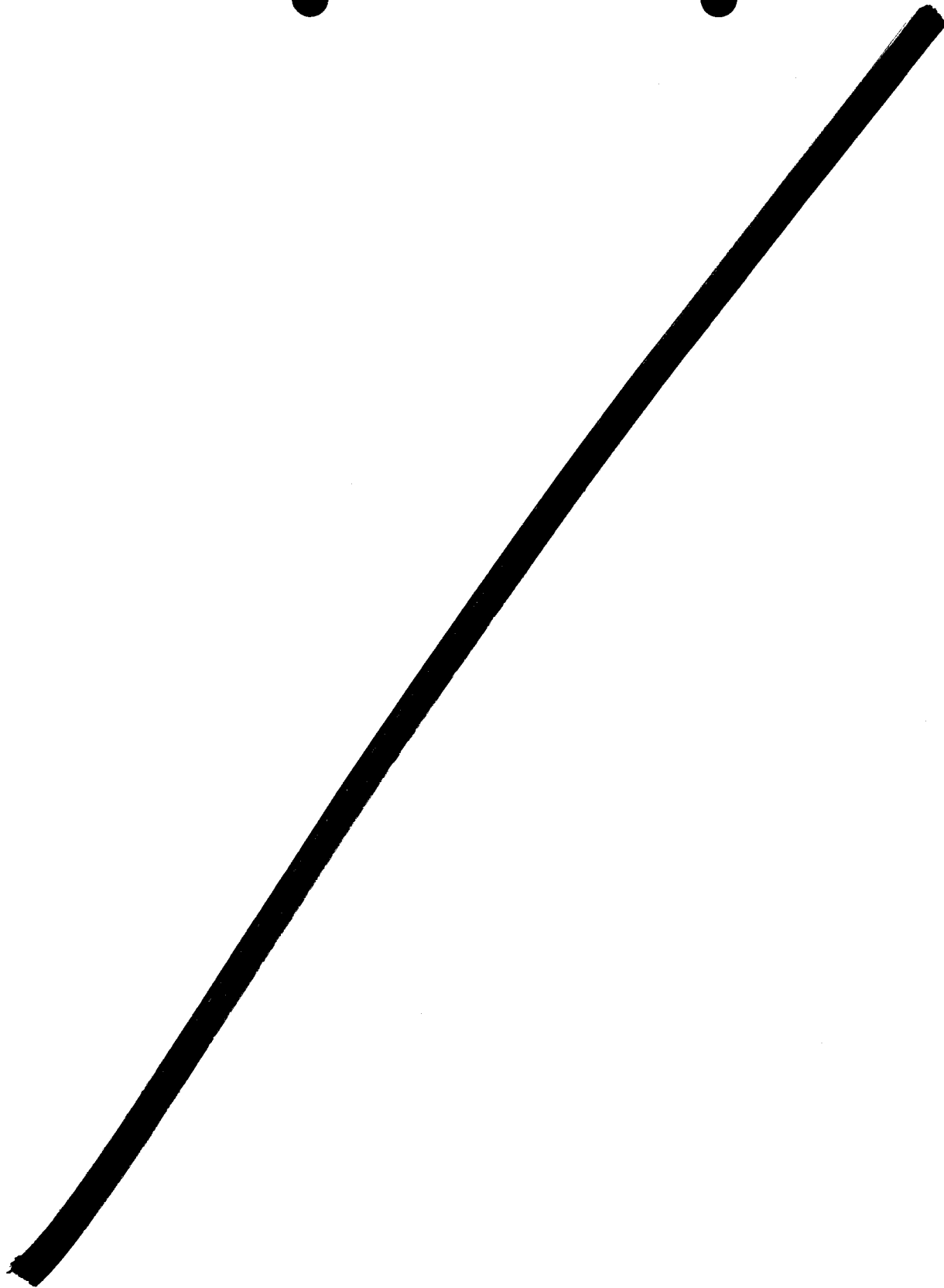
SPONGE TIP APPLICATORS, IN CLASS 21
(U.S. CLS. 2 AND 29).

OWNER OF U.S. REG. NOS. 817,516, 1,628,275
AND OTHERS.

SER. NO. 74-302,038, FILED 8-7-1992.

FIRST USE 0-0-1990; IN COMMERCE
0-0-1990.

GERALD C. SEEGARS, EXAMINING ATTOR-
NEY



Int. Cls.: 16, 18 and 21

Prior U.S. Cls.: 1, 2, 3, 5, 13, 22, 23, 29, 30, 33, 37, 38,
40, 41 and 50

United States Patent and Trademark Office

Reg. No. 2,929,973

Registered Mar. 8, 2005

**TRADEMARK
PRINCIPAL REGISTER**

MK SIGNATURE

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P. O. BOX 799045
DALLAS, TX 753799045

FOR: PAPER, CARDBOARD, AND GOODS MADE FROM THESE MATERIALS INCLUDED IN THIS CLASS, NAMELY, PRINTED MATTER, NAMELY, STATIONERY, NOTE CARDS, ENVELOPES, REMINDER POSTCARDS, NOTE PAPER, ORDER FORMS, LETTERHEADS AND BUSINESS CARDS; NEWSPAPERS FEATURING ARTICLES OF INTEREST TO WOMEN AND CONTAINING ADVICE REGARDING THE RECRUITING AND TRAINING OF OTHERS IN DIRECT SALES OF COSMETICS AND TOILETRY PRODUCTS; MAGAZINES AND PAMPHLETS CONTAINING TOPICS OF BEAUTY CARE AND FASHION PERIODICALLY DISTRIBUTED TO INDEPENDENT BUSINESS PERSONS ENGAGED IN THE SALE OF COSMETICS, TOILETRIES, AND RELATED PRODUCTS FOR THEIR USE AND DISTRIBUTION TO THEIR CUSTOMERS; PENS AND PENCILS FOR WRITING, PAPER IDENTIFICATION CARDS, PAPER LABELS, DECALS, DATE BOOKS; INSTRUCTIONAL BROCHURES COVERING SKIN CARE, MAKEUP, HAIR CARE, AND NAIL CARE TIPS AND PROPER APPLICATION AND USE OF SKIN CARE, MAKEUP, HAIR CARE AND NAIL CARE PRODUCTS; DISPO-

SABLE FACIAL TISSUES, PLASTIC AND PAPER BAGS FOR PACKAGING, EYE PENCIL SHARPENERS AND LIP PENCIL SHARPENERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 11-0-2001; IN COMMERCE 11-0-2001.

FOR: LEATHER AND IMITATIONS OF LEATHER AND GOODS MADE OF THESE MATERIALS INCLUDED IN THIS CLASS, NAMELY, TOTE BAGS, TRAVEL BAGS, AND UMBRELLAS, LIPSTICK VANITY HOLDERS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 11-0-2001; IN COMMERCE 11-0-2001.

FOR: COSMETIC VANITY TRAYS, EMPTY COSMETIC COMPACTS, AND COSMETIC BRUSHES, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 11-0-2001; IN COMMERCE 11-0-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SIGNATURE", APART FROM THE MARK AS SHOWN.

SER. NO. 76-387,257, FILED 3-26-2002.

INGA ERVIN, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,174,408

Registered Nov. 21, 2006

**TRADEMARK
PRINCIPAL REGISTER**

MK

Signature

MARY KAY INC. (DELAWARE CORPORATION)
P.O. BOX 799045
DALLAS, TX 753799045

CARE PREPARATIONS, NAIL COLORS, NAIL TOP
AND BASE COATS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50,
51 AND 52).

FOR: CREAM, LIQUID MAKEUP FOUNDA-
TIONS, CREAM MAKEUP FOUNDATIONS, FA-
CIAL HIGHLIGHTERS, BLEMISH CONCEALERS,
MASCARAS, EYELINERS, EYE PENCILS, EYE SHA-
DOWS, EYEBROW PENCILS, BLUSHERS, ROUGES,
POWDER CHEEK COLORS, LOOSE AND PRESSED
FACE POWDERS, LIPSTICKS, LIP GLOSSES, LIP
LINER PENCILS, LIP COLOR CRAYONS, NAIL

FIRST USE 11-1-2001; IN COMMERCE 11-1-2001.

OWNER OF U.S. REG. NOS. 1,148,597 AND
2,186,493.

SN 76-259,699, FILED 5-21-2001.

SETH A. RAPPAPORT, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

Reg. No. 3,174,407

United States Patent and Trademark Office

Registered Nov. 21, 2006

**TRADEMARK
PRINCIPAL REGISTER**

MK SIGNATURE

MARY KAY INC. (DELAWARE CORPORATION)
P. O. BOX 799045
DALLAS, TX 753799045

CARE PREPARATIONS, NAIL COLORS, NAIL TOP
AND BASE COATS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50,
51 AND 52).

FOR: CREAM, LIQUID MAKEUP FOUNDA-
TIONS, CREAM MAKEUP FOUNDATIONS, FA-
CIAL HIGHLIGHTERS, BLEMISH CONCEALERS,
MASCARAS, EYELINERS, EYE PENCILS, EYE SHA-
DOWS, EYEBROW PENCILS, BLUSHERS, ROUGES,
POWDER CHEEK COLORS, LOOSE AND PRESSED
FACE POWDERS, LIPSTICKS, LIP GLOSSES, LIP
LINER PENCILS, LIP COLOR CRAYONS, NAIL

FIRST USE 11-1-2001; IN COMMERCE 11-1-2001.

OWNER OF U.S. REG. NOS. 1,148,597, 2,384,691,
AND OTHERS.

SN 76-259,698, FILED 5-21-2001.

SETH A. RAPPAPORT, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

Reg. No. 2,414,631

United States Patent and Trademark Office

Registered Dec. 19, 2000

**TRADEMARK
PRINCIPAL REGISTER**

TIMEWISE

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P. O. BOX 799045
DALLAS, TX 753799045

FOR: SKIN CARE PRODUCTS, NAMELY SKIN
CREAMS, LOTIONS, CONDITIONERS, SERUMS,
OILS, OIL CONTROLLERS, OIL ABSORBERS,
MASKS, MOISTURIZERS, MUDS, SCRUBS, SOAPS,

BARS AND GELS; LIQUID, CREAM AND POWDER
FOUNDATIONS; AND MAKEUP REMOVERS, IN
CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 2-16-2000; IN COMMERCE 2-16-2000.

SN 75-645,284, FILED 2-22-1999.

JENNIFER DIXON, EXAMINING ATTORNEY

Int. Cl.: 4

Prior U.S. Cls.: 1, 6 and 15

Reg. No. 2,816,366

United States Patent and Trademark Office

Registered Feb. 24, 2004

**TRADEMARK
PRINCIPAL REGISTER**

VELOCITY

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P. O. BOX 799045
DALLAS, TX 753799045

OWNER OF U.S. REG. NOS. 2,518,569 AND
2,663,964.

FOR: CANDLES, IN CLASS 4 (U.S. CLS. 1, 6 AND
15).

SER. NO. 76-457,124, FILED 10-9-2002.

FIRST USE 8-0-2002; IN COMMERCE 8-0-2002.

YONG KIM, EXAMINING ATTORNEY

Int. Cls.: 9, 14, 18 and 25

Prior U.S. Cls.: 1, 2, 3, 21, 22, 23, 26, 27, 28, 36, 38, 39,
41 and 50

Reg. No. 2,859,305

United States Patent and Trademark Office

Registered July 6, 2004

**TRADEMARK
PRINCIPAL REGISTER**

VELOCITY

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P. O. BOX 799045
DALLAS, TX 753799045

FOR: SUNGLASSES SOLD OR GIVEN TO MEMBERS OF AN INDEPENDENT SALES FORCE IN RECOGNITION OF ACHIEVEMENT OR IN CONJUNCTION WITH THE PROMOTION OF CERTAIN FRAGRANCE, SKIN CARE, AND COLOR COSMETICS PRODUCTS, AS INCENTIVE OR COMMEMORATIVE ITEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

FOR: JEWELRY, NAMELY WATCHES SOLD OR GIVEN TO MEMBERS OF AN INDEPENDENT SALES FORCE IN RECOGNITION OF ACHIEVEMENT OR IN CONJUNCTION WITH THE PROMOTION OF CERTAIN FRAGRANCE, SKIN CARE, AND COLOR COSMETICS PRODUCTS, AS INCENTIVE OR COMMEMORATIVE ITEMS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

FOR: TOTE BAGS SOLD OR GIVEN TO MEMBERS OF AN INDEPENDENT SALES FORCE IN RECOGNITION OF ACHIEVEMENT OR IN CONJUNCTION WITH THE PROMOTION OF CERTAIN FRAGRANCE, SKIN CARE, AND COLOR COSMETICS PRODUCTS, AS INCENTIVE OR COMMEMORATIVE ITEMS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

FOR: CLOTHING; NAMELY BALL CAPS, AND TEE-SHIRTS SOLD OR GIVEN TO MEMBERS OF AN INDEPENDENT SALES FORCE IN RECOGNITION OF ACHIEVEMENT OR IN CONJUNCTION WITH THE PROMOTION OF CERTAIN FRAGRANCE, SKIN CARE, AND COLOR COSMETICS PRODUCTS, AS INCENTIVE OR COMMEMORATIVE ITEMS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-0-2001; IN COMMERCE 7-0-2001.

SER. NO. 76-308,226, FILED 8-31-2001.

JEFFREY S. MOLINOFF, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,663,964

Registered Dec. 17, 2002

**TRADEMARK
PRINCIPAL REGISTER**

VELOCITY

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P.O. BOX 799045
DALLAS, TX 753799045

FOR: PERFUMES; COLOGNES; RELATED FRAGRANCE PRODUCTS, NAMELY, BATH AND SHOWER GELS, BODY SOAPS, ESSENTIAL OILS FOR PERSONAL USE, BATH OILS AND BODY OILS; BATH SALTS; BUBBLE BATH; BODY LOTIONS, CREAMS, GELS AND POWDERS; BODY SPRAYS AND MISTS, AND FRAGRANCED WASH FOR FINE LINGERIE; SKIN CARE PRODUCTS, NAMELY, CLEANSING CREAMS AND LOTIONS, FRESHENERS, TONERS, MOISTURIZERS, NIGHT CREAMS, CLEANSING BARS AND FACIAL SOAPS, HAND CREAMS, BODY CREAMS, FACE CREAMS, SKIN CONDITIONERS, FACIAL OIL CONTROLLERS, SKIN OIL ABSORBERS, MASKS, COSMETIC FACIAL MUDS, BUFFING CREAMS, FACIAL AND BODY SCRUBS; SKIN EXFOLIATORS, SKIN EMOLLIENTS, LIQUID TALCS, AND BODY POLISHERS; NON-MEDICATED SUNSCREEN AND SUNBLOCK PREPARATIONS; AND COSMETICS, NAMELY SELF TANNING LOTIONS, CREAMS, GELS, AND SPRAYS, LIQUID MAKEUP FOUNDATIONS,

CREAM MAKEUP FOUNDATIONS, FACIAL HIGHLIGHTERS, BLEMISH CONCEALERS, MASCARAS, EYELINERS, EYE PENCILS, EYE SHADOWS, EYEBROW PENCILS, EYE MAKEUP REMOVERS, BLUSHERS, ROUGES, POWDER AND CREAM CHEEK COLORS, LOOSE AND PRESSED FACE POWDERS, LIPSTICKS, LIP GLOSSES, LIP LINER PENCILS, LIP COLOR CRAYONS, LIPSTICK ADJUSTERS, NAMELY, PREPARATIONS USED TO ADJUST THE SHADE OF LIP COLOUR, NAIL CARE PREPARATIONS, NAIL COLORS, NAIL TOP AND BASE COATS; ALL SOLD EXCLUSIVELY BY MEMBERS OF AN INDEPENDENT CONTRACTOR SALES FORCE WHO SELL PRODUCTS ONLY DIRECTLY TO THE CONSUMERS ALL SOLD EXCLUSIVELY BY MEMBERS OF AN INDEPENDENT CONTRACTOR SALES FORCE WHO SELL PRODUCTS ONLY DIRECTLY TO THE CONSUMERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-0-2001; IN COMMERCE 6-0-2001.

SN 76-047,294, FILED 5-12-2000.

JEFFREY S. MOLINOFF, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,518,569

Registered Dec. 11, 2001

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PRINCIPAL REGISTER**

VELOCITY

MARY KAY INC. (DELAWARE CORPORATION)
16251 DALLAS PARKWAY
P.O. BOX 799045
DALLAS, TX 753799045

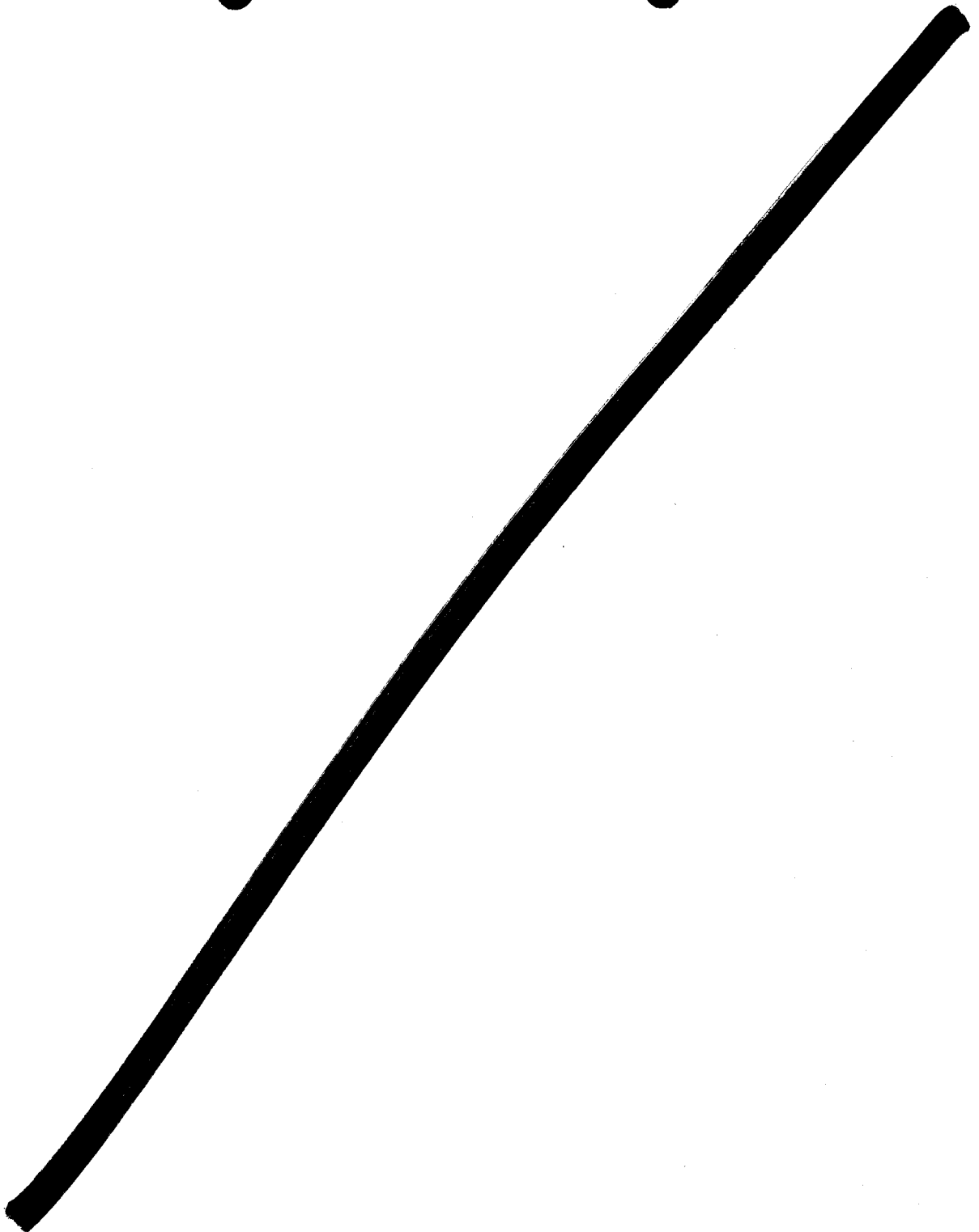
FOR: PERFUMES, COLOGNES, AND RELATED FRAGRANCE PRODUCT, NAMELY, BATH GELS, BODY SOAPS, AND ESSENTIAL OILS FOR PERSONAL USE; BATH OILS AND BODY OILS; BODY LOTIONS, CREAMS AND POWERS, AND SKIN CARE PRODUCTS, NAMELY, CLEANSING CREAMS AND LOTIONS, FRESHENERS, TONERS, MOISTURIZERS, NIGHT CREAMS, CLEANSING

BARS AND FACIAL SOAPS, HAND CREAMS, BODY CREAMS, FACE CREAMS, SKIN CONDITIONERS, OIL CONTROLLERS, OIL ABSORBERS, MASKS, MUDS, BUFFING CREAMS, FACIAL AND BODY SCRUBS; SKIN EXFOLIATORS, SKIN EMOLIENTS, LIQUID TALCS, AND BODY POLISHERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-0-2001; IN COMMERCE 6-0-2001.

SN 75-922,758, FILED 2-18-2000.

KIMBERLY PERRY, EXAMINING ATTORNEY



Alison Schneck
Legal Support Coordinator
Legal Resources

August 19, 2005

MARY KAY®

**VIA CERTIFIED MAIL - # 7003 1010 0004 5245 8602
AND REGULAR MAIL**

Amy L. Weber
Independent Beauty Consultant
200 Mary Senica Ct.
La Salle, IL 61301-9676

COPY

Dear Amy:

As you know, under the terms of the Mary Kay Independent Beauty Consultant Agreement, either party to the Agreement has the right to terminate the Agreement between the parties upon thirty (30) day's prior written notice. After careful consideration, we have decided it would be in the best interest of both parties if the Independent Beauty Consultant Agreement between us were terminated. Accordingly, this letter will constitute notice to you that your Independent Beauty Consultant Agreement will be terminated effective thirty (30) days from the date of this letter, effective September 17, 2005.

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

We wish you well in your future endeavors.

Sincerely,

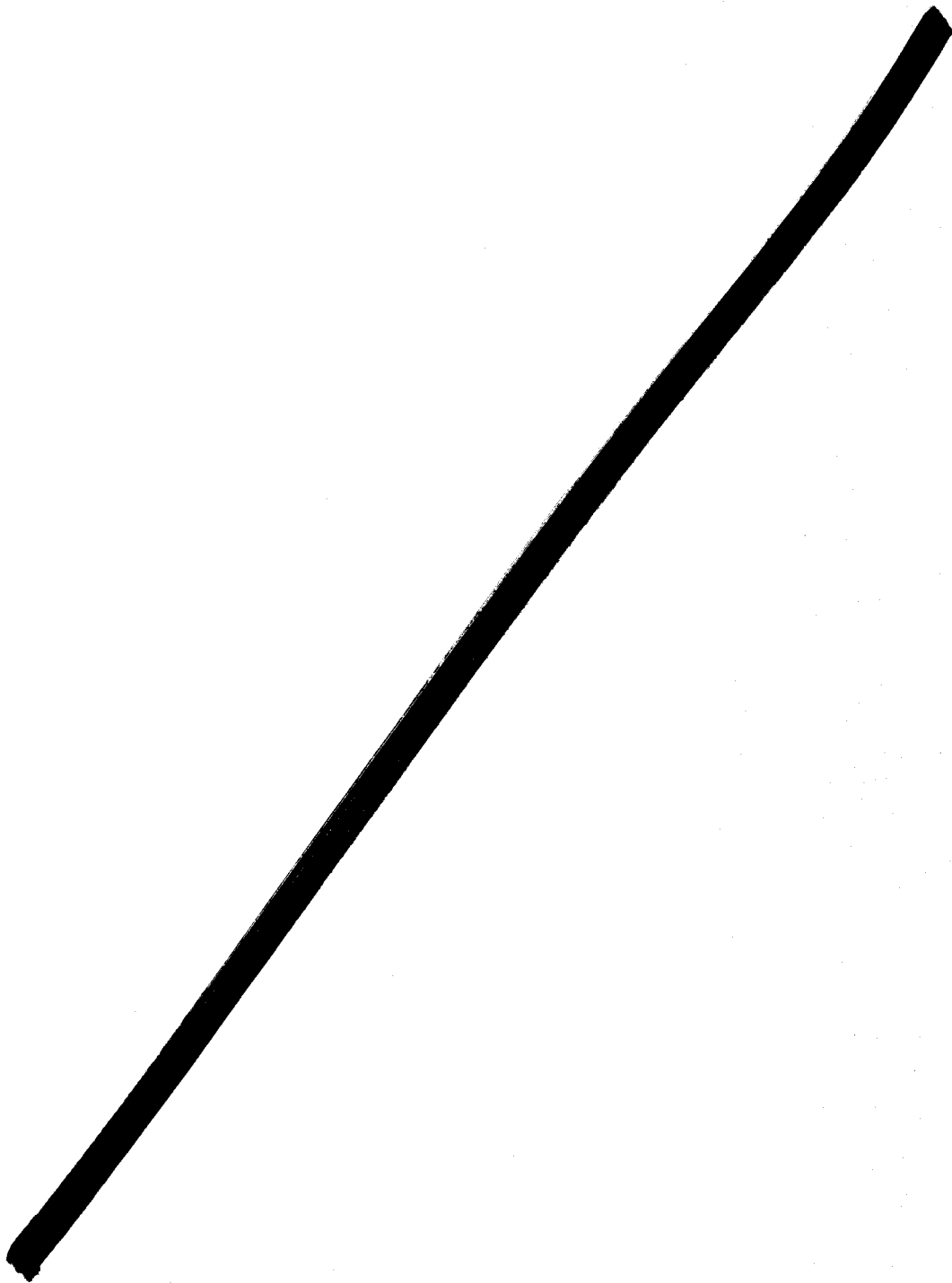


Alison Schneck
Legal Support Coordinator

Mary Kay Inc.
P.O. Box 799045
Dallas, TX 75379-9045
972-687-5777
Fax 972-687-1604

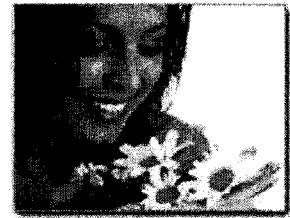
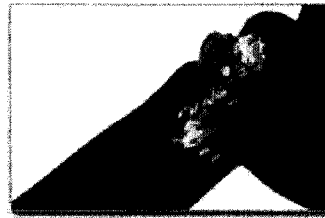
Amy L. Weber
August 19, 2005
Page Two

cc: Nadine Bowers, Independent Executive Senior Sales Director
Laura Beitler, Legal Resources Department
Judy Musser, Consultant Records Department
bcc: Nathan Moore, Legal Resources Department
Janice Peveto, Sales Development Department
Barbara Chenevert, Customer Satisfaction
Debbie Fetter, Customer Operations Group
Pat Smith, Qualification Department
Daniel Berman, Manager Career Car Services
Southern Distribution Center, Customer Service Department
Cynthia Pytlak, Executive Support Services



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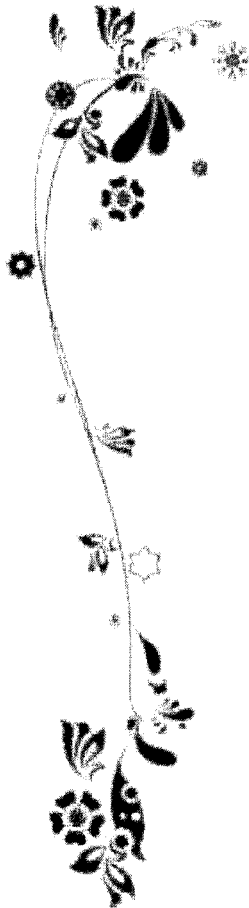
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Touch of Pink Cosmetics is your destination for all
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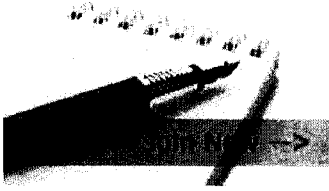
We are former Mary Kay consultants liquidating our
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**Free Shipping on All Orders over \$100.00
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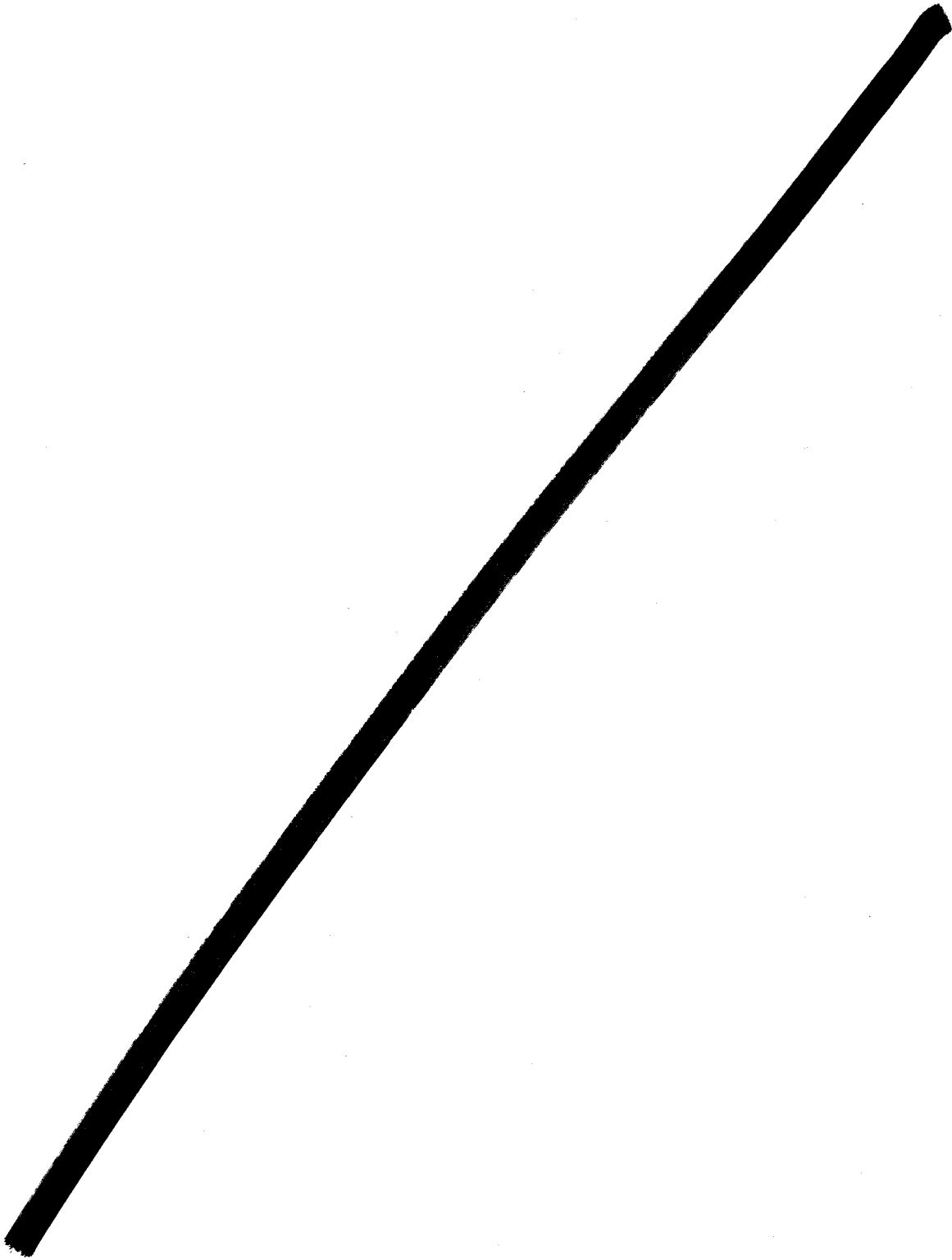
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Welcome to Touch of Pink Cosmetics

Touch of Pink Cosmetics is your destination for all your favorite Mary Kay Products at 50% - 75% off Retail.

We are former Mary Kay consultants liquidating our inventory, so we can offer you these authentic Mary Kay products at great prices! We also offer a place where consultants & customers can locate hard to find retired product. We have a huge selection of Mary Kay skin care and cosmetics for men & women. We have Fragrances, Private Spa Collection, Hand & Body Products, plus beauty accessories such as Compacts & Applicators. We also carry Mary Kay Signature Products, Timewise and Velocity Products.

Disclaimer:

We sell genuine Mary Kay products. Mary Kay is a registered trademark. This website is not affiliated with or endorsed by Mary Kay Inc.

eBay Store: www.stores.ebay.com/touchofpink
 Webstore: www.touchofpinkcosmetics.com
 Email: inventory@touchofpinkcosmetics.com

Listings

To protect bidder privacy, when the price or highest bid on an item reaches or exceeds a certain level, User IDs will be displayed as anonymous names. For auction items, a bold price means at least one bid has been received.

Note: Anonymous names may appear more than once and may represent different bidders.

Touch of Pink

Item	Start	End	Price	Title	High Bidder/Status
300217907412	Apr-20-08	May-20-08 08:55:49	\$5.00	Mary Kay Signature Cheek Color Apricot Breeze	Available
300217910605	Apr-20-08	May-20-08 09:05:04	\$5.00	Mary Kay Signature Cheek Color Brick	Available
300217914130	Apr-20-08	May-20-08 09:15:16	\$5.00	Mary Kay Signature Cheek Color Bronze Sands	Available
300217915616	Apr-20-08	May-20-08 09:19:21	\$5.00	Mary Kay Signature Cheek Color Burnished Bronze	Available
300217917081	Apr-20-08	May-20-08 09:23:18	\$5.00	Mary Kay Signature Cheek Color Cranberry Bold	Available
300217917692	Apr-20-08	May-20-08 09:25:00	\$5.00	Mary Kay Signature Cheek Color Eggplant	Available
300217918096	Apr-20-08	May-20-08 09:26:03	\$5.00	Mary Kay Signature Cheek Color Gold Canyon Duet	Available
300217918599	Apr-20-08	May-20-08 09:27:22	\$5.00	Mary Kay Signature Cheek Color Island Spice	Available
300217919308	Apr-20-08	May-20-08 09:29:01	\$5.00	Mary Kay Signature Cheek Color Just Peachy	Available
300217919642	Apr-20-08	May-20-08 09:29:58	\$5.00	Mary Kay Signature Cheek Color Maple Walnut	Available
300217920166	Apr-20-08	May-20-08 09:31:14	\$5.00	Mary Kay Signature Cheek Color Mocha Blush	Available
300217921275	Apr-20-08	May-20-08 09:34:08	\$5.00	Mary Kay Signature Cheek Color Pink Flamingo	Available
300217921772	Apr-20-08	May-20-08 09:35:34	\$5.00	Mary Kay Signature Cheek Color Pink Meringue	Available
300217922113	Apr-20-08	May-20-08 09:36:33	\$5.00	Mary Kay Signature Cheek Color Pink Sapphire	Available
300217922422	Apr-20-08	May-20-08 09:37:27	\$5.00	Mary Kay Signature Cheek Color Plum Dazzle	Available
300217922776	Apr-20-08	May-20-08 09:38:22	\$5.00	Mary Kay Signature Cheek Color Santa Fe Sun Duet	Available
300217923034	Apr-20-08	May-20-08 09:39:07	\$5.00	Mary Kay Signature Cheek Color Silky Plum	Available
300217923386	Apr-20-08	May-20-08 09:40:05	\$5.00	Mary Kay Signature Cheek Color Teaberry	Available
300217923682	Apr-20-08	May-20-08 09:41:02	\$6.50	Mary Kay Signature Creamy Cheek Color Spice	Available
300217925366	Apr-20-08	May-20-08 09:46:20	\$7.00	Mary Kay Soft Luster Eye Color Copper Glaze	Available
300217925896	Apr-20-08	May-20-08 09:47:52	\$7.00	Mary Kay Soft Luster Eye Color Jade Mint	Available
300217926244	Apr-20-08	May-20-08 09:48:58	\$7.00	Mary Kay Soft Luster Eye Color Taupe Shimmer	Available
300217926644	Apr-20-08	May-20-08 09:50:12	\$7.00	Mary Kay Soft Luster Eye Color Violet Dawn	Available

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300218015821	Apr-20-08	May-20-08 13:27:56	\$4.75	Mary Kay Signature Brow Liner Soft Auburn	Available
300218016481	Apr-20-08	May-20-08 13:30:01	\$5.75	Mary Kay Signature Brow Liner Soft Black	Available

Go see all current [items for sale](#) by this member.**FeedBacks****User:**[onionbeez](#) (9) **Date:**May-05-08 23:12:28 PDT**Praise:** fast shipping**User:**[onionbeez](#) (9) **Date:**May-05-08 23:11:41 PDT**Praise:** fast shipping**User:**[onionbeez](#) (9) **Date:**May-05-08 23:09:57 PDT**Praise:** fast shipping**User:**[6308annemarie](#) (6) **Date:**May-05-08 15:33:18 PDT**Praise:** Excellent service. I received my product within 3 days of payment. Thank you!**User:**[tonehemnes](#) (12 ★) **Date:**May-05-08 13:31:10 PDT**Praise:** top ebayer**User:**[jjohns384fjh](#) (948 ★) **Date:**May-05-08 12:41:01 PDT**Praise:** THANK YOU! THANK YOU!! THANK YOU!!! JUST AS DESCRIBED!!**User:**[hennf150](#) (11 ★) **Date:**May-05-08 09:35:50 PDT**Praise:** The product is just what my wife was looking for. Shipment arrived very fast.**User:**[russo57](#) (95 ★) **Date:**May-04-08 16:34:06 PDT**Praise:** As promised, fast shipping....A+++ Thank you**User:**[barb61869](#) (282 ★) **Date:**May-04-08 14:31:27 PDT**Praise:** Fast shipping - just as described - THANKS!!!**User:**[tracie7507](#) (21 ★) **Date:**May-02-08 13:53:05 PDT**Praise:** Great ebayer!!! fast shipping!!!To see all feedback for this member, go to the [Member Profile](#) page.View this member's [Reviews & Guides](#).View this member's [My World](#) page.To create your own About Me page, [click here](#).[About eBay](#) | [Announcements](#) | [Security Center](#) | [eBay Toolbar](#) | [Policies](#) | [Government Relations](#) | [Site Map](#) | [Help](#)

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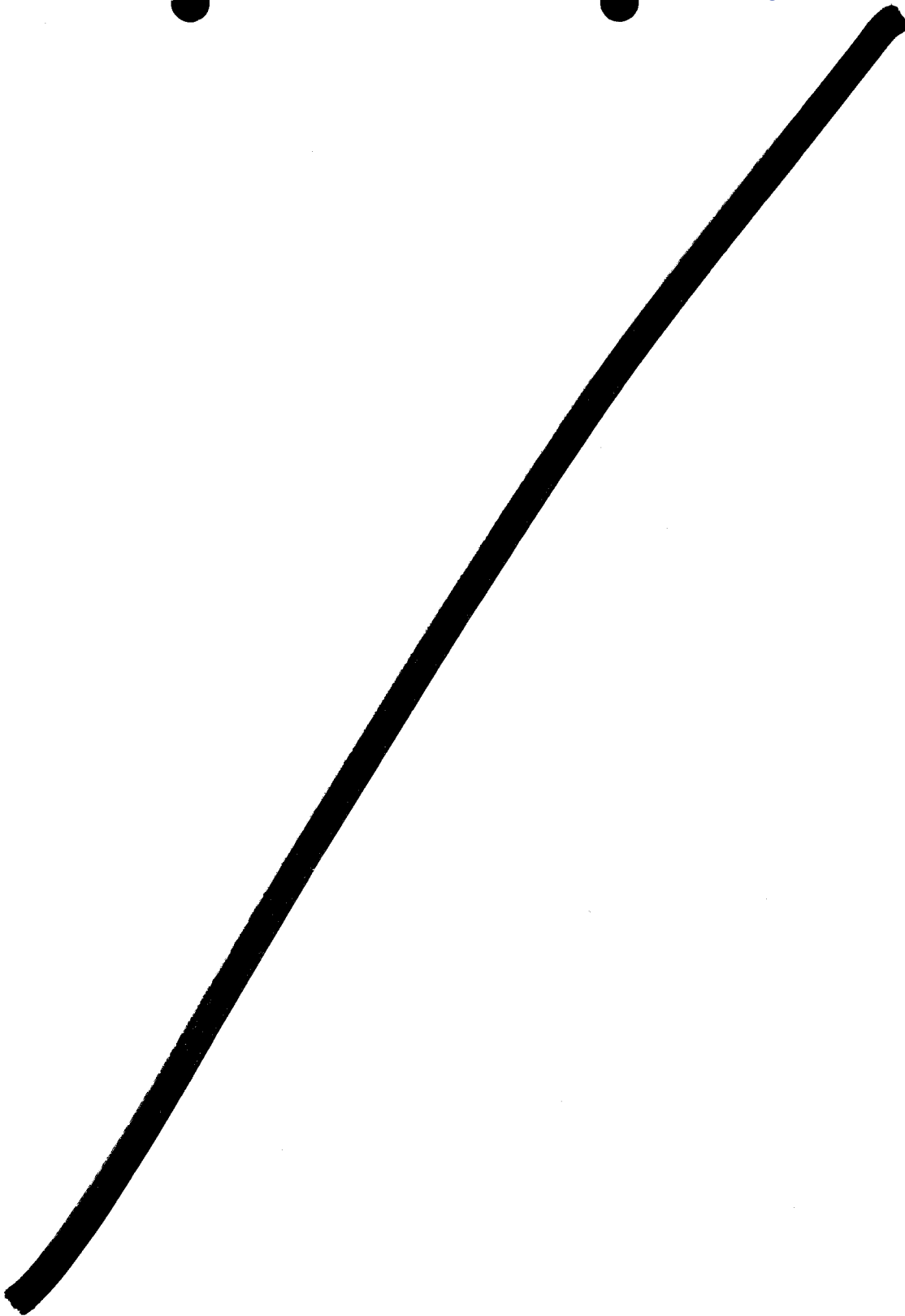
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Welcome to **Touch of Pink Cosmetics** your one
stop shop for **ALL** your **Mary Kay** needs!

Touch of Pink is your destination for New, Limited Edition, Rare and Vintage Mary Kay products up to 50% off. We are former Mary Kay consultants liquidating our inventory, so we can offer you these authentic Mary Kay products at great prices! We have a huge selection of Mary Kay skin care and cosmetics for men & women.

We have **Fragrances, Hand & Body products,** plus beauty accessories such

as **Compacts & Applicators.**

We also carry **Mary Kay Signature,**

Private Spa Collection, Timewise and .

new items and special
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and **Velocity Products.**

We receive new stock in weekly so
check back often.



Thank you for visiting Touch
of Pink Cosmetics. We carry
the #1 selling brand of skin
care & color cosmetics at prices
up to **50% off retail**. All
products are new, in the
box. We carry authentic
products from former
consultants and they have never
been tested or used.



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Mint Bliss Energizing Lotion for Feet
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We buy bulk inventory from consultants, who are looking to reduce their inventory or those who are leaving the Mary Kay Company. Please email us for more information on our liquidation.

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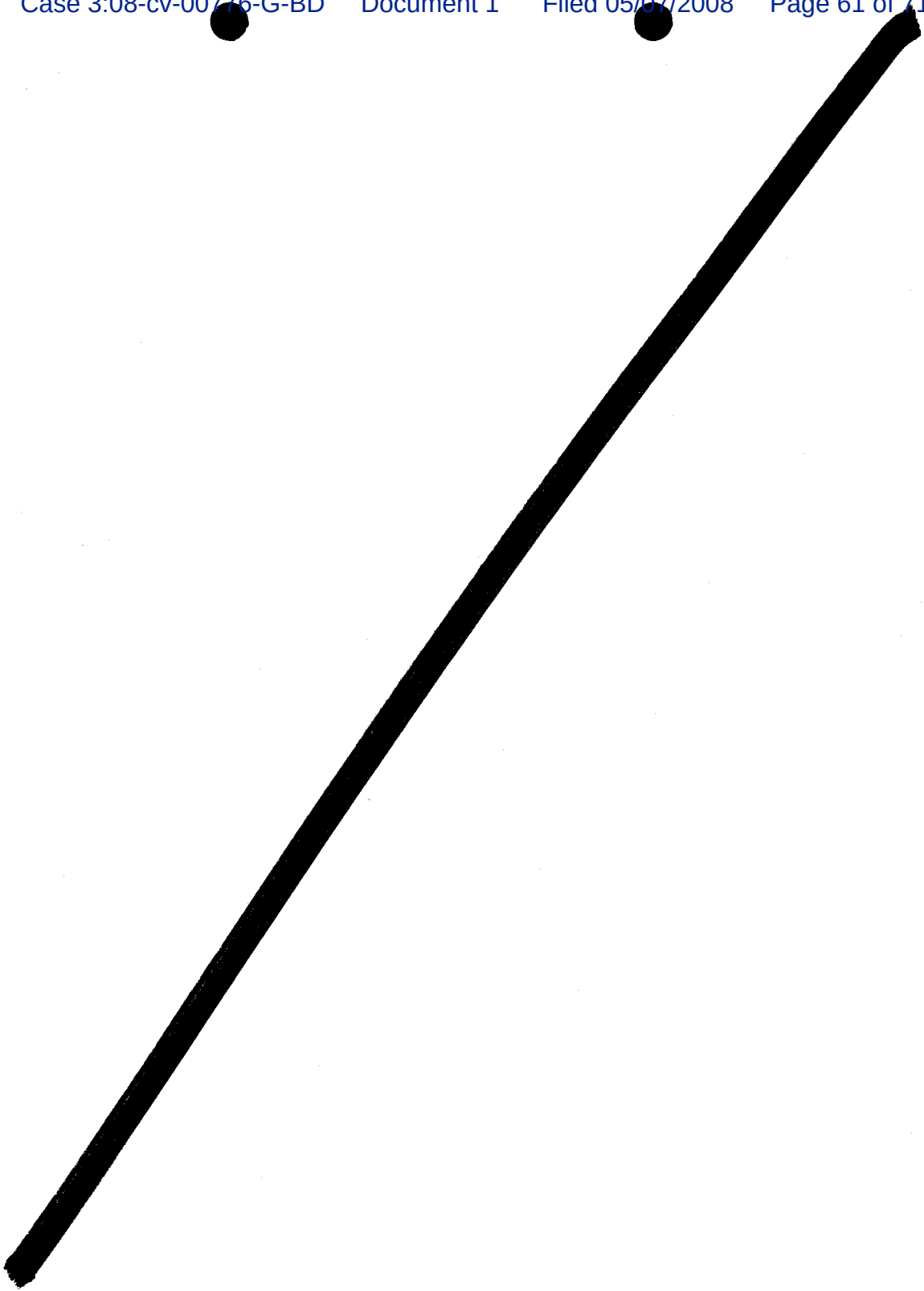
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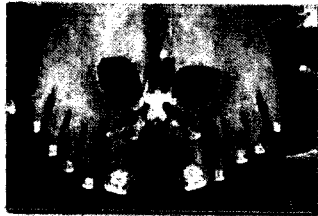
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MK Men's Collection
MK Private Spa Collection
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Supplies
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MK Sun Essentials
MK TimeWise Skin Care
MK Velocity
MK Womens Fragrance
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Thank you for visiting Touch of Pink Cosmetics. Our intentions are to create a friendly, easy to use, website to better serve our customers. Our highly trained staff is here to answer any questions you may have. Our goal is to provide the best customer service possible to better serve all your needs.

We carry the #1 selling brand of skin care & color cosmetics, Mary Kay, at prices up to **75% off retail**. All products are new, without ever being tested or used. Most of our products have the original box or packaging, although there are a few that don't. We carry authentic products that were originally purchased directly from the Mary Kay warehouse. Although, they are not new from the warehouse, they are product from former consultants of Mary Kay. Most of our products are discontinued, which is why we can offer such great prices. There are some products which can be past their expiration dates; we do everything we can to ensure your products are not. If you are concerned with expiration dates or you are in need products that have future expiration dates, please contact your local Mary Kay consultant to purchase these products.

Touch of Pink Cosmetics is your destination for New, Limited Edition, Rare and Vintage Mary Kay products at discounts up to 75% off retail. We are former Mary Kay consultants who have liquidated our inventory and are now helping others who, for one reason or another, have decided to end their Mary Kay business, or simply want to balance their current inventory. Being a former Sales Consultant, I know how that can dampen your revenue stream. We offer you an outlet to reduce your slow moving product. In return, you can balance your inventory and implement profit making strategies.

Availability:

All products listed on our website are in stock with the quantity listed available. If you don't see a product listed, chances are it is out of stock. We add new items on Wednesday & Friday, so check back often. Please feel free to **email us** with your product needs and we will do our best to fulfill them or notify you when it is back in stock.

Samples:

As a little token of our appreciation, we will include free samples with every order you place with us. If you are undecided about a color choice and need a sample,

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please email us your name, address & the type of sample requested.

Disclaimer:

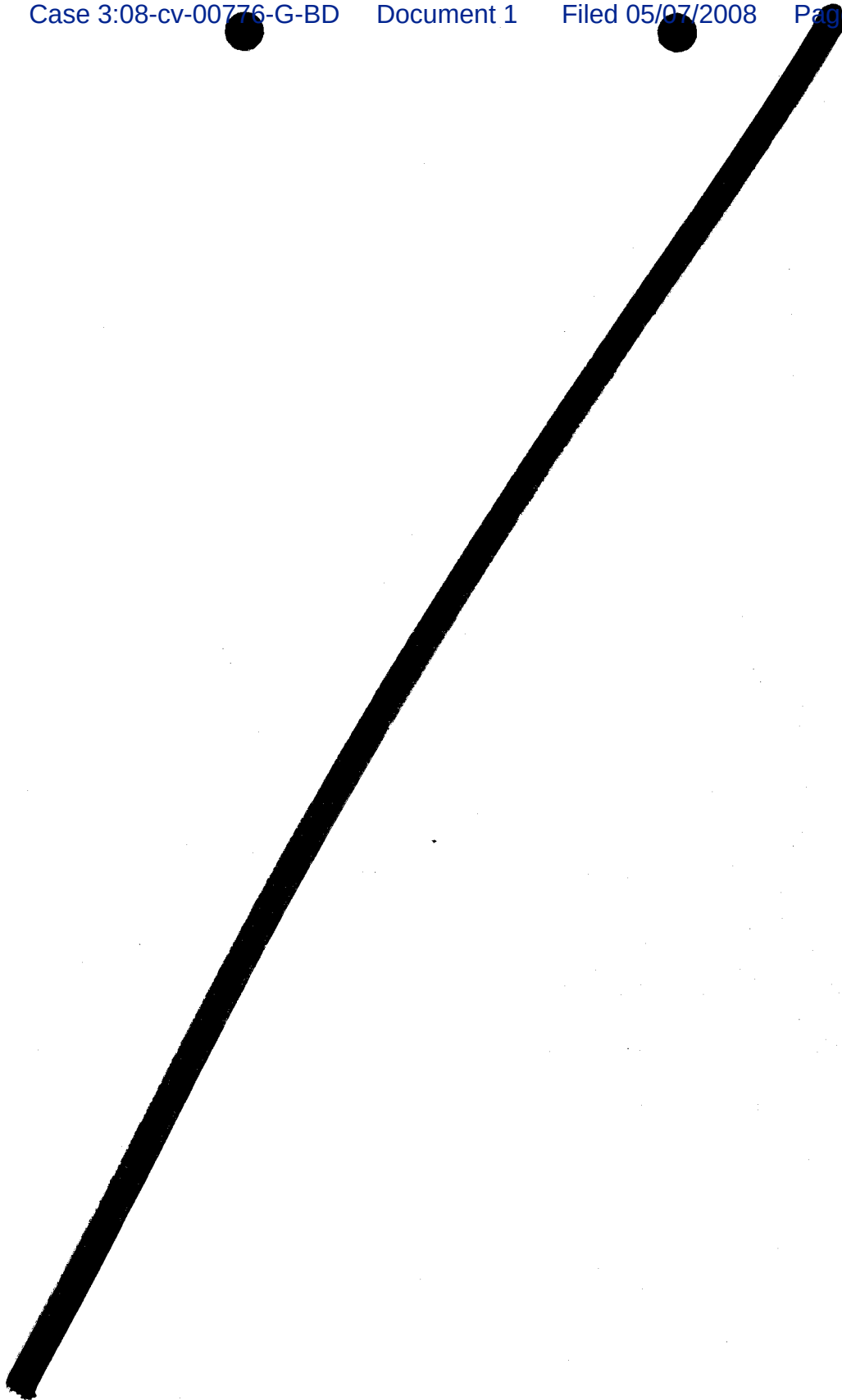
We sell genuine Mary Kay products. This website is not endorsed by or affiliated with Mary Kay Inc. This company has been established by former Mary Kay Consultants who are assisting consultants to liquidate their inventory. We also provide a place for consultants and customers to locate hard to find retired product or even new Mary Kay items at a great discount!

Any questions or comments?

Toll Free Number: 866.849.0738 (US Calls)
815.224.1017 (International Calls)
Email: service@touchofpinkcosmetics.com
Web Store: www.touchofpinkcosmetics.com
eBay Store: www.stores.ebay.com/touchofpink



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Mary Kay retailer increases sales 20X with ProStores



We were happy when we started selling \$500 to \$1,000 a day through ProStores. But that was just the beginning. Our business just keeps getting bigger and bigger—we can hardly believe it ourselves.

Scott Weber, Owner of www.touchofpinkcosmetics.com

ProStores helps cosmetics seller expand their market past the million-dollar mark

Scott and Amy Weber had a nice business selling on eBay, but they wanted to expand to a larger market. They looked at other Web store options, but they were too complicated. Then they saw a link on eBay about ProStores. It was easy to set up, and sales soon surpassed all their expectations. "We started selling three years ago on eBay, and are still selling \$5,000 to \$10,000 a month there. But the bulk of our business is now on ProStores. Two years ago, we learned about ProStores through a link on eBay and opened up our Web store. Since then, our sales have skyrocketed. We were happy when we started selling \$500 to \$1,000 a day through ProStores. But that was just the beginning. Our business just keeps getting bigger and bigger—we can hardly believe it ourselves! Our sales have grown tremendously; we're now selling \$5,000 to \$7,000 a day on ProStores. About 50% of our customers are repeat buyers, and we keep getting new ones, so our sales keep growing. The fees are low on ProStores as well, so our percentage of profits have grown right along with our sales."

"We used to do \$90,000 to \$100,000 in sales a year on eBay, but ProStores has expanded our market beyond our wildest dreams. Our first year on ProStores we did \$350,000. This year, our second year, we expect to do \$1.5 to \$2 million in sales. I would have never thought that when I started our ProStores Web store in my basement 2 years ago."

Simple to set up, simple for buyers

The Webers don't have a technical background, so they wanted to find a Web store that was easy to create and use. They tried other providers, but the products were too complicated and difficult. But ProStores is designed for all levels of experience, which helped the Webers get off to a quick start. "ProStores is very easy to set up. The wizards guide you through every step, and the quick reference menus make it easy to find what you need. Listing products and loading photos is fast and simple."

The Webers' customer base includes many senior buyers, who get confused and frustrated by complex ordering systems with pop-ups. ProStores makes buying simple and easy for everyone. "For our customers, it's simple to navigate and search for products. It's great for our older customers—they like simple. We love the feature that lets us display the quantity of each item available. People see the scarcity, which encourages them to buy more—sometimes all we have of an item."

ProStores' automation helps ease growing pains

Rapid growth can be difficult for companies to adjust to, but ProStores' automation and compatibility with eBay helps makes the business more manageable for the Webers. "It's a lot of work keeping up with the volume of our business—we're taking about 4,500 orders a month, averaging about 5 items each. That triples in November and December. Thankfully ProStores makes it as easy as possible for us. The Web store is very simple to run. We use PayPal for our payment processing, which saves us a lot of time. ProStores is very compatible with eBay, so we can manage those businesses together. We love the reporting tools, and check on how we are doing two to three times a day. The Design Studio is great for updating pages. We change our specials each week, and the tools help us update the site quickly."

Reliable service and support keeps business running smooth

Scott and Amy have their hands full dealing with a high volume of orders, so any technical problems could put a major crimp in their ability to process sales. Thankfully with ProStores' dependable service, they can focus on their business instead of fixing glitches. "The service is very reliable, it's up and running all the time. When we first got started, we were calling technical service twice a day to get the help we needed setting up, and they were great. But these days we rarely have reason to call, because now that we know what we're doing, we haven't had any problems."

Driving new traffic pays off

Effective traffic generation has played a big part in Touch of Pink Cosmetics' success. ProStores offers a suite of free tools to help, but an investment in advertising takes the Webers' sales even higher. "To get new customers, we do pay-per-click advertising on Google, Yahoo, and MSN. We spend about \$300 to \$400 a day on advertising. But that helps us generate \$5,000 to \$10,000 a day in sales, so it's well worth the investment. We also use the Search Engine Optimization feature to get customers from natural search, and use the shopping feeds to Yahoo, Shopping.com and Google Base. We're now getting 1,800 to 2,000 hits a day on our site."

ProStores' free tools help generate 50% of sales

While pay-per-click advertising plays a big role in getting new customers, a large percentage of the Weber's sales come from a very affordable source—ProStores' built-in Email Marketing tools. The success of their Email Marketing and repeat customers percentage helps keep profits high in relation to their ad spend. "We use ProStores' Email Marketing program to drive repeat sales. We send emails every other week with offers, such as a free gift or free shipping. Our customers love it—about two-thirds of our emails get opened, which we hear is outstanding for email marketing. We track the success of the emails with the reporting tools, and after sending out an email, about half of our sales are from the emails!"

SIGN UP NOW

Questions? call 1-866-737-3229

Mon- Fri: 10am-7pm ET

Touch of Pink Recommends

- ProStores Features
- Step-by-step guided setup
- Merchandising features
- Store design manager

- ProStores mrketing services

Touch of PinkTips for Success

Drive traffic to your store

“Use keyword advertising, shopping engines, and Search Engine Optimization. It will take a few months to get up in the rankings, but be patient. It takes some time to get going, but once it does it's like a snowball—it gets bigger and bigger and bigger.”

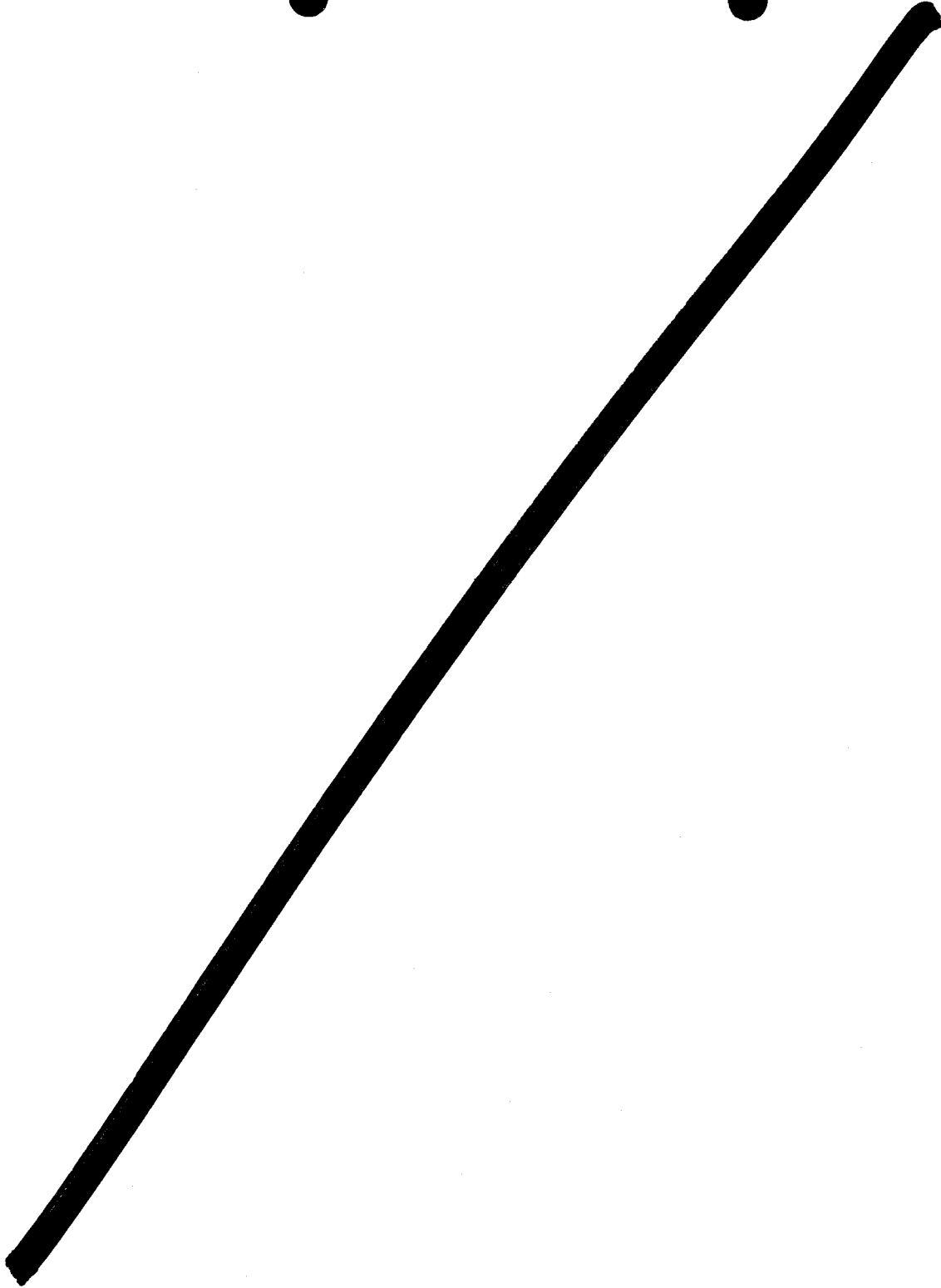
Provide great customer service

“Repeat customers can make a huge difference for your bottom line. Ship items quickly, and answer emails promptly. Use Email Marketing to build customer relationships and keep them coming back.”

Related Resources

- [ProStores Services »](#)
- [ProStores Learning Center »](#)
- [Compatible Tools »](#)

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eBay and the eBay logo are registered trademarks of eBay Inc.



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Search

Advanced Search
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Web Books

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Mary Kay Official Site

MaryKay.com Get beauty, skincare and makeup. Online with independent consultant

Sponsored Link

Sponsored Links

Tip: Save time by hitting the return key instead of clicking on "search"

Cosmetics: Makeup and Cosmetics by Mary Kay

US Headquarters. Markets health and beauty products. Offers an independent representative opportunity.

www.marykay.com/ - 33k - [Cached](#) - [Similar pages](#)

[Independent Beauty Consultant](#)

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[More results from marykay.com »](#)

MaryKay Sale 50% Off

Free Shipping on Orders over \$100

Get up to 50% Off - Fast Shipping

www.TouchofPinkCosmetics.com

>Shocking "MaryKay Videos

See Your Upline's Sponsoring Secret

In These Videos They Tried to Ban

www.MagneticSponsoring.com/MaryKay

MaryKay 50-75% Off

Discount Cosmetics - Free Samples

Fast Ship. Free On Orders Over \$100

www.PinkDiscount.com

Mary Kay Beauty Consultants Locator: Find Mary Kay Cosmetics and ...

By using the **Mary Kay** Consultant Locator, you agree that you will use this service and information returned in your search results only for the purpose of ...

www.marykay.com/Locator.aspx - 42k - [Cached](#) - [Similar pages](#)

Mary Kay - Wikipedia, the free encyclopedia

Mary Kay is a brand of skin care cosmetics and color cosmetics sold by **Mary Kay Inc.**

Mary Kay World Headquarters is located in the Dallas suburb of Addison, ...

en.wikipedia.org/wiki/Mary_Kay - 94k - [Cached](#) - [Similar pages](#)

Mary Kay

Mary Kay biography, tributes, quotes, and list of awards won.

www.marykaytribute.com/ - 4k - [Cached](#) - [Similar pages](#)

Mary Kay Place

Message Boards. Discuss this name with other users on IMDb message board for **Mary Kay Place** ... Find where **Mary Kay Place** is credited alongside another name ...

www.imdb.com/name/nm0005316/ - 51k - [Cached](#) - [Similar pages](#)

Mary Kay In Touch Community

Site for consultants to place online orders, and receive educational materials. Login required.

www.marykayintouch.com/ - 8k - [Cached](#) - [Similar pages](#)

Mary Kay Letourneau Facts Of The Case - Full Story - The Crime library

On top of all that, **Mary Kay** always had an ex-student from her sixth grade class ... A few days later, 34-year-old **Mary Kay** Letourneau and 13-year-old Vili ...

www.crimelibrary.com/criminal_mind/psychology/marykay_letourneau/1.html - 48k - [Cached](#) - [Similar pages](#)

Pink Truth - Facts, opinions, and the real story behind Mary Kay ...

It's exciting talking about the value of that "free" **Mary Kay** car, isn't it? How great to imagine not having a car payment again. ...

www.pinktruth.com/ - 62k - [Cached](#) - [Similar pages](#)

Mary Kay Opinions, Information, Truth and Experiences

Mary Kay resource sounding board, return product, MK sucks, articles, discussion, the truth.

www.thepinkingshears.org/ - 22k - [Cached](#) - [Similar pages](#)

Discount marykay

Skincare, private spa fragrance and

hard to find discontinued cosmetics

www.modern-beauty-boutique.com

Don't Join MaryKay Until

Learn Why 97% of Affiliates Fail

No Meetings, No Hype, Just Results

www.MyEasyCommute.com

Discount MaryKay Makeup

50-75% off **MaryKay** Cosmetics

Free Shipping on Orders Over \$95.00

www.BeautyPeddler.com

Buy MaryKay Cosmetics

Complete line of **MaryKay** Products

Take 50-70% Off. Same day shipping.

www.pinkbargains.com

Does GDI really Works?

Learn The Truth About GDI

And All Others MLM Businesses

the7greatliesofnetworkmarketing.com

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Personal Experience: Mary Kay Cosmetics

Associate recounts her negative experience with the company.

cc.edumacation.com/mlm/marykay.html - 4k - [Cached](#) - [Similar pages](#)

Book results for mary kay



[Hissy Fit](#) - by Mary Kay Andrews - 438 pages

[Mass with Mary: The Prison Years](#) - by Christina Dress - 248 pages

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JS 44 (Rev. 11/04)

308 CV - 776 - CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mary Kay Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEY'S (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Linda L. Addison
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, TX 77010-3095 Telephone: (713) 651-5151

DEFENDANTS

Weber, Amy L.; Weber, Scott J.; and Touch of Pink Cosmetics

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT LaSalle
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
ATTORNEYS (IF KNOWN)

MAY - 7 2008
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF ☐ 1 DEF ☐ 1 | Incorporated or Principal Place of Business In This State | PTF ☐ 4 DEF ☐ 4 |
| Citizen of Another State | ☐ 2 ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 ☐ 3 | Foreign Nation | ☐ 6 ☐ 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☒ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DMC/DMM (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS - Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence HABEAS CORPUS: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1125; 15 USC 1114; 15 USC 1117

Brief description of cause: Tortious interference with existing and prospective contract; unfair competition; passing off; trademark infringement

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND
Injunctive relief and damagesCHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE May 6, 2008 SIGNATURE OF ATTORNEY OF RECORD _____**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARY KAY, INC.,

Plaintiff,

v.

CASE NO.: 3-08-CV-776-G

AMY L. WEBER, SCOTT J. WEBER,
and TOUCH OF PINK COSMETICS,

Defendants.

**DEFENDANTS' ORIGINAL ANSWER TO PLAINTIFF'S
ORIGINAL COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, Amy L. Weber, Scott J. Weber and Touch of Pink Cosmetics (collectively "Defendants") file this Original Answer to the Original Complaint for Damages and Injunctive Relief ("the Complaint") filed by Mary Kay, Inc. ("Mary Kay" or "Plaintiff") and for good cause show the following:

1. Defendants admit that Amy Weber was previously a Mary Kay consultant, but denies all remaining allegations in Paragraph 1 of the Complaint.
2. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 2 of the Complaint and therefore deny same.
3. Defendants admit that Amy Weber was a previously Mary Kay consultant and that Ms. Weber received an August 19, 2005 letter from Mary Kay stating that her status as a Mary Kay consultant was terminated, effective September 17, 2005. Defendants deny all remaining allegations in Paragraph 3 of the Complaint.
4. Defendants deny the allegations in Paragraph 4 of the Complaint.

5. Defendants deny the allegations in sentence one of Paragraph 5 of the Complaint.
Defendants admit that Mary Kay is seeking a preliminary injunction, a permanent injunction and money damages in its Complaint, but deny that it is entitled to the relief sought.
6. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 6 of the Complaint and therefore deny same.
7. Defendants admit the allegations in Paragraph 4 of the Complaint.
8. Defendants deny any allegation that Touch of Pink Cosmetics must be authorized by Mary Kay. Defendants further deny sentence 2 of Paragraph 8. Defendants admit the remaining allegations in Paragraph 8 of the Complaint.
9. Defendants admit that Mary Kay has brought claims under 15 USC §§ 1051 *et seq.* and that jurisdiction is proper. Defendants deny any remaining allegations in Paragraph 9 of the Complaint.
10. Defendants admit that Mary Kay has brought claims based on diversity jurisdiction, that this is complete diversity and that Mary Kay claims that damages exceed \$75,000. Defendants deny any remaining allegations in Paragraph 9 of the Complaint.
11. Defendants admit that venue is proper in the Northern District of Texas, Dallas Division, but deny all remaining allegations in Paragraph 11 of the Complaint.
12. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 12 of the Complaint and therefore deny same.

13. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 13 of the Complaint and therefore deny same.
14. Defendants admit the allegations in the sentences 1, 2, 3, 5 and 6 of Paragraph 14 of the Complaint. Defendants deny the allegations in sentence 4 of Paragraph 14 of the Complaint.
15. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 15 of the Complaint and therefore deny same.
16. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 16 of the Complaint and therefore deny same.
17. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 17 of the Complaint and therefore deny same.
18. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 18 of the Complaint and therefore deny same.
19. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 19 of the Complaint and therefore deny same.
20. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 20 of the Complaint and therefore deny same.

21. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 21 of the Complaint and therefore deny same.
22. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 22 of the Complaint and therefore deny same.
23. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in Paragraph 23 of the Complaint and therefore deny same.
24. Defendants deny the allegations in Paragraph 24 of the Complaint.
25. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in sentences 1 and 5 of Paragraph 25 of the Complaint and therefore deny same. Defendants admit that they were offering unsold inventory on eBay under the username “scottw815” beginning in March 2005, as alleged in sentence 2 of Paragraph 25. Defendants deny the allegations in sentences 3, 4 and 6 of Paragraph 25. Defendants admit that Amy Weber received the letter attached as Exhibit E to the Complaint and the letter speaks for itself.
26. Defendants deny the allegations in sentences 1 and 3 of Paragraph 26 of the Complaint and deny that Exhibit D cited in this paragraph is evidence of an offer to re-purchase inventory. Defendants admit that Amy Weber received the letter attached as Exhibit E to the Complaint and the letter speaks for itself.
27. Defendants deny that Amy Weber had a written agreement with Mary Kay. Defendants admit the remaining allegations in Paragraph 27 of the Complaint.

28. Defendants admit that they advertise and sell Mary Kay products on the Touch of Pink website, but deny they are required to have the authorization or consent of Mary Kay as alleged in sentence 1 of Paragraph 28 of the Complaint. Defendants deny that they are “unlawfully advertising,” as alleged in sentence 2. Defendants admit that Exhibit F is a screenshot of the Touch of Pink website and the exhibit speaks for itself.
29. Defendants admit that they advertise and sell Mary Kay products on eBay, but deny they are required to have the authorization of Mary Kay as alleged in sentence 1 of Paragraph 29 of the Complaint. Defendants admit the allegations in sentences 2-4 of Paragraph 29. Defendants deny the allegations in sentences 5 and 6 of Paragraph 29 of the Complaint.
30. Defendants admit Amy Weber is no longer a Mary Kay consultant, admit they do not purchase directly from Mary Kay and admit the wording cited in footnote 3 of Paragraph 30 is contained on the Touch of Pink website. Defendants deny all remaining allegations in Paragraph 30.
31. Defendants deny the allegations in Paragraph 31 of the Complaint.
32. Defendants admit that Exhibit J is an internet article about their eBay store and the Exhibit speaks for itself. Defendants deny the remaining allegations in Paragraph 32 of the Complaint.
33. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in sentences 1 and 3 of Paragraph 33 of the Complaint and therefore deny same. Defendants deny the allegations in sentence 2 of Paragraph 33.

34. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in sentence 1 of Paragraph 34 of the Complaint and therefore deny same. Defendants deny the allegations in sentence 2 of Paragraph 34. Defendants admit that they advertise that they can ship and worldwide and have shipped to multiple countries.
35. After reviewing information known or reasonably available to them, Defendants are without sufficient information to admit or deny the allegations in sentence 1 of Paragraph 35 of the Complaint and therefore deny same. Defendants deny the allegations in sentences 2 and 3 of Paragraph 35.
36. Defendants deny the allegations in Paragraph 36 of the Complaint.
37. Defendants deny they are required to have the authorization or consent of Mary Kay to use the Mary Kay name to describe the product for sale, as alleged in sentences 1 and 2 of Paragraph 37 of the Complaint and deny all remaining allegations in Paragraph 37.
38. Defendants admit that their websites contain the language in sentences 2 and 3 of Paragraph 38, but deny the remaining allegations in Paragraph 38 of the Complaint.
39. Defendants deny the allegations in sentences 1, 3, 6 and 7 of Paragraph 39. Defendants admit they have purchased and continue to purchase key words and have sponsored links on certain internet search engines that include the words “Mary Kay” but deny any remaining allegations in sentences 2 and 3 of Paragraph 39. Defendants deny the remaining allegations in Paragraph 39 of the Complaint.
40. Defendants admit they sell non-Mary Kay related products on their website but deny all other allegations in Paragraph 40 of the Complaint.

41. Defendants admit the allegations in sentence 1, but deny all remaining allegations in of Paragraph 41 of the Complaint.
42. Defendants deny the allegations in Paragraph 42 of the Complaint.
43. Defendants deny the allegations in Paragraph 43 of the Complaint.
44. Defendants deny the allegations in Paragraph 44 of the Complaint.
45. Defendants deny the allegations in Paragraph 45 of the Complaint.
46. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
47. Defendants deny the allegations in Paragraph 47 of the Complaint.
48. Defendants deny the allegations in Paragraph 48 of the Complaint.
49. Defendants deny the allegations in Paragraph 49 of the Complaint.
50. Defendants deny the allegations in Paragraph 50 of the Complaint.
51. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
52. Defendants deny the allegations in Paragraph 52 of the Complaint.
53. Defendants deny the allegations in Paragraph 53 of the Complaint.
54. Defendants deny the allegations in Paragraph 54 of the Complaint.
55. Defendants deny the allegations in Paragraph 55 of the Complaint.
56. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
57. Defendants deny the allegations in Paragraph 57 of the Complaint.
58. Defendants deny the allegations in Paragraph 58 of the Complaint.
59. Defendants deny the allegations in Paragraph 59 of the Complaint.
60. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
61. Defendants deny the allegations in Paragraph 61 of the Complaint.
62. Defendants deny the allegations in Paragraph 62 of the Complaint.
63. Defendants deny the allegations in Paragraph 63 of the Complaint.

- 64. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
- 65. Defendants deny the allegations in Paragraph 65 of the Complaint.
- 66. Defendants deny the allegations in Paragraph 66 of the Complaint.
- 67. Defendants deny the allegations in Paragraph 67 of the Complaint.
- 68. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
- 69. Defendants deny the allegations in Paragraph 69 of the Complaint.
- 70. Defendants deny the allegations in Paragraph 70 of the Complaint.
- 71. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
- 72. Defendants deny the allegations in Paragraph 73 of the Complaint.
- 73. Defendants deny the allegations in Paragraph 73 of the Complaint.
- 74. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
- 75. Defendants deny the allegations in Paragraph 75 of the Complaint.
- 76. Defendants deny the allegations in Paragraph 76 of the Complaint.
- 77. Defendants hereby incorporate their answers to Paragraphs 1-45, above.
- 78. Defendants deny the allegations in Paragraph 78 of the Complaint.
- 79. This Paragraph does not appear to contain allegations for which a response is required. However, to the extent any such allegations are contained therein, Defendants deny such allegations.
- 80. This Paragraph does not appear to contain allegations for which a response is required. However, to the extent any such allegations are contained therein, Defendants deny such allegations.

Defendants deny that Mary Kay, Inc. is entitled to a temporary restraining order, a temporary or permanent injunction, monetary damages, attorney's fees, interest, costs, or any other relief sought in its prayer for relief.

AFFIRMATIVE DEFENSES

Defendants further plead the following defenses to the claims filed by Plaintiff:

1. Defendants are engaged in the lawful purchase and resale of goods.
Defendants purchase and sell genuine Mary Kay products. Thus, Plaintiff's claims for trademark infringement and unfair competition are barred under the First Sale Doctrine.
2. Defendants' use of the Mary Kay trademarks in buying and selling genuine Mary Kay products is permitted as a fair use (Counts 3-8).
3. Defendants' plead the defense of laches based on Plaintiff's unexcused delay in asserting its claims, to the detriment of Defendants.
4. Plaintiff's claims for tortious interference (Counts 1 and 2), unfair competition under Texas common law (Count 6), Texas common law trademark infringement (Count 7) and unjust enrichment (Count 8) are barred, in whole or in part, by the two year statute of limitations.
5. Defendants plead the defense of justification to Plaintiff's claims for tortious interference (Counts 1 and 2).

WHEREAS, Defendants, Amy L. Weber, Scott J. Weber and Touch of Pink Cosmetics respectfully requests that upon hearing of this cause, that Mary Kay, Inc. be awarded nothing by its claims, that Defendants be awarded costs of court and that the Court grant such other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2008, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel authorized to receive electronically Notices of Electronic Filing.

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