

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUL 20 2009
CLERK, U.S. DISTRICT COURT
By [Signature] Deputy

MARY KAY INC.,

Plaintiff,

v.

KARLA BALLADARES and
PINK FACE COSMETICS,

Defendants.

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3-09-CV-1363-L

CIVIL ACTION NO. 33023

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Plaintiff Mary Kay Inc. files this Original Complaint against Karla Balladares and Pink Face Cosmetics (collectively "Defendants"), and would respectfully show:

PARTIES

1. 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.

2. Defendant Karla Balladares is an individual residing in Homestead, Florida. She may be served with process at her residence at 4122 NE 30th Street, Homestead, Florida, 33033.

3. On information and belief, Defendant Pink Face Cosmetics maintains its principal place of business at 4122 NE 30th Street, Homestead, Florida, 33033. On information and belief, Pink Face Cosmetics is an unincorporated association with Defendant Karla Balladares as the sole proprietor. Pink Face Cosmetics may be served with process on its agent and sole proprietor, Karla Balladares, at 4122 NE 30th Street, Homestead, Florida, 33033.

JURISDICTION AND VENUE

4. 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.

5. 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.

6. Pursuant to 28 U.S.C. §1391(b)(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 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. Venue is also proper in this district pursuant to the parties' written agreements to litigate any matter related to those agreements in Dallas, Dallas County, Texas.

BACKGROUND

A. Mary Kay

7. 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. 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 products at its manufacturing facility in Dallas, Texas.

8. 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.

9. 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.

B. Mary Kay's Marks Have Earned a Highly Distinctive and Famous Status

10. 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; Class 16 – At least as early as 1989; Class 21 – At least as early as 1990	2542184	10/30/99 – 2/26/02
MK	Class 3 – At least as early as 2001	2259020	11/22/96 – 4/9/02

11. 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 A). Mary Kay also holds registered trademarks for many of its individual products and certain product lines. These registered trademarks include MK Signature, Timewise, and Velocity, among others. (See Certificates of Registration for these Mary Kay Marks, attached as Exhibit B).

12. 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.

13. 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.

C. Mary Kay's IBC Agreements Protect Its Business Model and Trademark Rights.

14. The IBC Agreement places certain obligations on the Independent Beauty Consultants. Under these agreements, 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.*

* * *

6. To purchase...all Mary Kay® products only from [the] Company.

15. The obligations placed on the Independent Beauty Consultants by the IBC Agreement are intended to protect the integrity of Mary Kay® products, the Mary Kay brand and preserve the 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 or to retail sales or service establishments.

16. The IBC Agreement also places obligations on the Independent Beauty Consultant designed to protect the stature of the Mary Kay's trademarks. The terms of the IBC Agreement prohibit Independent Beauty Consultants from using the Mary Kay name or trademark in any unapproved 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.

D. Defendants' Willful, Intentional and Deceitful Conduct.

17. On or about July 12, 2005, Ms. Balladares signed an IBC Agreement that was accepted in Dallas, Texas by Mary Kay, allowing her to become a Mary Kay Independent Beauty Consultant. Like all other Independent Beauty Consultants, Ms. Balladares agreed to sell Mary Kay products directly to ultimate consumers and not to sell or display the Mary Kay products in retail sales outlets. She 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, and to only buy Mary Kay® products from Mary Kay. By agreeing to follow the Mary Kay IBC Agreement, Ms. Balladares 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.

18. On or about March 1, 2008, Ms. Balladares signed an Independent Sales Director Agreement, allowing her to become an Independent Sales Director. As an Independent Sales Director, Ms. Balladares had the right to receive from Mary Kay certain incentive compensation

for her activities in promoting retail sales by other beauty consultants. In exchange, Ms. Balladares reaffirmed her agreement to sell and promote the sell of Mary Kay products directly to ultimate consumers and not to sell or display the Mary Kay products in retail outlets. In addition, she agreed not to use Mary Kay's trademarks or trade names in any type of advertising matter or literature (excluding sales literature and advertising formats supplied by Mary Kay) without first obtaining Mary Kay's written permission.

19. Mary Kay recently learned that Ms. Balladares was violating the terms of her IBC Agreement by improperly advertising and selling Mary Kay products on her own Internet Website, www.pinkfacecosmetics.com, and the auction site, eBay. Pink Face Cosmetics is an interactive Website where customers throughout the United States and the world can purchase the products offered for sale by Ms. Balladares. Like the Pink Face Cosmetics Website, the eBay store is an interactive Website where customers throughout the world can purchase products offered for sale by Ms. Balladares. Ms. Balladares advertises and sells Mary Kay products on Pink Face Cosmetics and her eBay site without authorization or consent from Mary Kay in breach of her IBC Agreement and her Independent Sales Director Agreement.

20. On July 2, 2009, Ms. Balladares received notice from Mary Kay that it was terminating her IBC and ISD Agreements, effective July 2, 2009. Ms. Balladares called Mary Kay to express that there had been a mistake, and expressly denied any affiliation with Pink Face Cosmetics. Mary Kay provided Ms. Balladares with information it had obtained linking her to Pink Face Cosmetics and reinstated her agreements to allow her the opportunity to clear up any misinformation. On information and belief, Ms. Balladares provided intentionally misleading or fraudulent information to Mary Kay to maintain her status as an Independent Beauty Consultant and Independent Sales Director for the purpose of continuing her fraud against Mary Kay. More specifically, Ms. Balladares informed Mary Kay that she had been working with a police detective and that the detective provided her with the identities of two people, one of which allegedly owned Pink Face Cosmetics, and the other allegedly owned a P.O. Box associated with

Pink Face Cosmetics. Mary Kay believes this information is untrue, as Mary Kay continues to find information that identifies Ms. Balladares as the owner of Pink Face Cosmetics.

21. Thus, Mary Kay had no choice but to terminate Ms. Balladares' IBC Agreement and Independent Sales Director Agreement, effective July 16, 2009, as a result of her numerous violations of contract, fraudulent activities, and to protect Mary Kay's trademarks, name, and goodwill. Because she is no longer a Mary Kay Independent Beauty Consultant, Ms. Balladares no longer has the ability to purchase Mary Kay products directly from Mary Kay; nor does she have any contractual right or license to use the Mary Kay marks.

22. As a former Independent Beauty Consultant and Independent Sales Director, she is aware of the terms of the IBC Agreement. She is also aware that all Independent Beauty Consultants must enter into the IBC Agreement before becoming Independent Beauty Consultants. On information and belief, Ms. Balladares has recruited others to become Independent Beauty Consultants for the fraudulent purpose of providing products to Pink Face Cosmetics, and also willfully and intentionally solicited current Mary Kay Independent Beauty Consultants to sell Mary Kay products to her in breach of their IBC Agreements.

23. Indeed, the success of her business strategy necessarily requires the calculated inducement of current Independent Beauty Consultants to breach their IBC Agreements with Mary Kay. These willful acts by Defendants constitute a breach of contract with her IBC Agreement and Independent Sales Director Agreement, as well as tortious interference with existing contractual relationships between Mary Kay and its current Independent Beauty Consultants.

E. Defendants Use Mary Kay's Trademarks and Name Without Authorization.

24. Defendants have continued to use Mary Kay's trademarks and name without authorization or consent from Mary Kay after Mary Kay terminated Ms. Balladares' IBC Agreement and Independent Sales Director Agreement. Defendants' unlawful and unauthorized

use of the trademarks and name after Ms. Balladares' termination harms not only Mary Kay, but also consumers who are confused or deceived into purchasing products through her website believing they are purchasing guaranteed products from an authorized Mary Kay Independent Beauty Consultant. Defendants' use in commerce of Mary Kay's trademarks and name began more than forty years after Mary Kay adopted and began using the Mary Kay mark. As a result, Defendants' unauthorized use began after Mary Kay's trademarks and name became famous.

25. Defendants' unauthorized use of Mary Kay's trademarks 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. As a result of the confusion that has been or is likely to be engendered by Defendants' activities, Mary Kay's trademarks and associated valuable goodwill are therefore being irreparably harmed.

26. On information and belief, Defendants also have caused initial interest confusion for Mary Kay consumers through their improper advertisement on search engines. Specifically, Defendants have purchased and continue to purchase key word searches on Google and other search engines using Mary Kay's trademarks and name. As a result, when a consumer performs a search using the term "Mary Kay," the Pink Face Cosmetics website appears in the "Sponsored Link" advertisements on Google, MSN, and Yahoo. Because the link advertisement does not clearly identify its source, consumers are likely to believe falsely that Pink Face Cosmetics is sponsored by, affiliated with, or otherwise approved by Mary Kay. By unlawfully creating a false impression of affiliation or sponsorship in this manner, Defendants are diverting consumers from authorized Mary Kay websites.

F. Defendants' Misconduct Causes Mary Kay Substantial and Irreparable Harm.

27. 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 Defendants have 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 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.

28. Moreover, Defendants' unauthorized use of the Mary Kay Marks constitutes a misappropriation of Mary Kay's exclusive property right in its trademarks. Defendants' unauthorized use of Mary Kay's trademarks 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, the quality of customer service accompanying those goods, or the scope of the warranty offered by Defendants. As a result of the confusion that has been or is likely to be engendered by Defendants' activities, Mary Kay's trademarks, name, and associated goodwill are not under the control of Mary Kay and Mary Kay is therefore being irreparably harmed.

COUNT I: Breach of Contract

29. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

30. Mary Kay and Ms. Balladares entered into an IBC Agreement and an Independent Sales Director Agreement. Under those agreements, Mary Kay agreed to sell products to Ms. Balladares in exchange for her agreement, among other things, to: (1) promote and sell Mary Kay products directly to ultimate consumers *only*, and to refrain from selling products through retail sales outlets, including Websites; (2) purchase all Mary Kay products *only* from Mary Kay; (3) maintain the highest standards of integrity, honesty, and responsibility in dealings with Mary

Kay, consumers, and other Beauty Consultants; and (4) protect the Mary Kay trademarks by obtaining Mary Kay's written permission prior to using the Mary Kay name in any advertising, including Internet advertising.

31. Ms. Balladares breached each of the provisions described above and caused harm to Mary Kay. Defendants are liable to Mary Kay for breach of contract in an amount to be proven at trial.

COUNT II: Fraud

32. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

33. Defendants made material representations to Mary Kay. The representations were false. When Defendants made the representations, Defendants knew the representations were false or made the representations recklessly, as positive assertions, and without knowledge of their truth. On information and belief, Ms. Balladares has recruited others to become Independent Beauty Consultants for the fraudulent purpose of providing products to Pink Face Cosmetics. Mary Kay relied on Defendants' false representations. The false representations caused Mary Kay injury and damages in an amount to be proved at trial.

COUNT III: Tortious Interference With An Existing Contractual Relationship

34. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

35. As a result of Ms. Balladares' relationship with Mary Kay as a Mary Kay Independent Beauty Consultant and Independent Sales Director, she had 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. Defendants have further knowledge that current

Independent Beauty Consultants are prohibited from selling Mary Kay products through retail outlets, including Internet websites, and are also prohibited from buying Mary Kay products from any source other than Mary Kay.

36. 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.

37. Defendants have no privilege or justification for her actions.

38. Defendants' actions proximately caused Mary Kay's loss. As a result of 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 IV: Unfair Competition Under The Lanham Act

39. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

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

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

42. As a result of 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 V: Trademark Infringement Under The Lanham Act

43. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

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

45. On information and belief, 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).

46. As a result of 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

47. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

48. Defendants' conduct constitutes unfair competition under Texas common law.

49. As a result 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

50. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein

51. Defendants' conduct constitutes trademark infringement under Texas common law.

52. As a result of 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: Attorneys' Fees

53. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

54. Mary Kay retained the undersigned attorneys to represent it in this action and agreed to pay such attorneys reasonable and necessary attorneys' fees. Mary Kay seeks recovery of its reasonable and necessary attorneys' fees through trial and all appeals in accordance with Section 38.001 of the Texas Civil Practice & Remedies Code.

COUNT IX: Unjust Enrichment

55. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

56. Defendants have been unjustly enriched, to Mary Kay's detriment, by the unauthorized use of the Mary Kay name and marks. 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. Defendants have profited from the improper Internet sale of these Mary Kay products relying on Mary Kay's good reputation associated with its mark.

57. In addition, by virtue of Ms. Balladares' promises to Mary Kay under the IBC Agreement and the ISD Agreement, Ms. Balladares has been unjustly enriched by obtaining products from Mary Kay at wholesale prices and receiving commissions and other prizes and awards from Mary Kay, and she would not have received any of those commissions, prizes, and other awards had Mary Kay known of her unlawful activities.

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

COUNT X: Injunctive Relief

59. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

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

REQUEST FOR JURY TRIAL

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

PRAYER

For the reasons stated above, Plaintiff Mary Kay prays:

A. that Defendants, their officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with 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.pinkfacecosmetics.com or any other website that contains infringing or otherwise unlawful content;

4. continuing to sell Mary Kay products on any eBay store or similar auction site that contains infringing or otherwise unlawful content;
 5. falsely or misleadingly representing themselves and their activities, goods, and services to be sponsored by, approved by, or affiliated with Mary Kay;
 6. falsely or misleadingly representing any product of Defendants or others as originating from, being sponsored by, or approved by Mary Kay;
 7. 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;
 8. continuing the sale and/or distribution of any unlawfully obtained Mary Kay products; and
 9. inducing, assisting, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (1)-(8) above;
- B. for an award of damages sustained as a result of Defendants' activities, trebled as allowed by law;
- C. for an award of exemplary damages sustained as a result of Defendants' activities;
- D. for an accounting of Defendants' sales resulting from 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 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.

DATED: July 20, 2009

Respectfully submitted,



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MAG JUDGE