

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

No. _____

ROBIN BLACKMON-DUNDA and
STRYKER DUNDA, husband and wife;

Plaintiffs,

vs.

MARY KAY INC., a Texas corporation

Defendant.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

___ JUDICIAL DISTRICT

PLAINTIFFS' VERIFIED ORIGINAL PETITION:

- COUNT I---BREACH OF CONTRACTS;**
- COUNT II---INTENTIONAL INTERFERENCE WITH CONTRACTS;**
- COUNT III---INTERFERENCE WITH PROSPECTIVE CONTRACTS;**
- COUNT IV--DECEPTIVE TRADE PRACTICES;**
- COUNT V---INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
- COUNT VI--DEFAMATION**

COME NOW the Plaintiffs, by and through their attorneys undersigned and for their Verified Original Petition against the Defendant, allege as follows:

1. This case arises under Texas law inasmuch as the Defendant has caused events to occur in Dallas County, Texas out of which this action arises.
2. The Plaintiffs ROBIN BLACKMON-DUNDA and STRYKER DUNDA have been husband and wife residing in Bedford, Texas at all material times.

1 3. The Defendant, MARY KAY INC. (hereinafter "Defendant" or "the company" or "Mary
2 Kay") is a Texas corporation headquartered in Dallas, Texas selling cosmetics through a huge
3 organization of multi-level contractually related consultants operating as independent contractors
4 who are compensated on the basis of a percentage of wholesale purchases made by the
5 consultants and retail purchases of customers under them in each consultant's own business, also
6 referred to as her "Sales Unit."

7
8 4. Plaintiff Robin Blackmon-Dunda entered into contracts as an Independent Beauty Consultant
9 and Sales Director with the Defendant, copies of which are attached hereto as Exhibits 1 (form
10 currently used by Mary Kay in lieu of copy of Plaintiff's 1987 contract, which she is unable to
11 locate) and 2 respectively.

12
13 5. Until her termination by Defendant, Plaintiff Robin Blackmon-Dunda was a Sales Director
14 with Mary Kay of long, and illustrious, standing having begun her Mary Kay business in July,
15 1987 and debuting as a Sales Director in 1994, achieving Top Ten in sales for her (Sapphire)
16 Seminar three times, Million-Dollar Sales Director twice, and Top Ten Sales Director
17 Nationwide twice. She was Queen of Unit Sales for the Sapphire Seminar in 2005, and 1st
18 runner-up in 2006, finishing 5th for the entire nation. Her Mother, Jo Ann Blackmon has been
19 with Mary Kay for 37 star-studded years of her own. They are the first mother-daughter Million-
20 Dollar Sales Directors in Mary Kay history.
21
22

23 6. Plaintiff Robin Blackmon-Dunda had 683 Independent Beauty Consultants and the 5th ranked
24 unit sales out of 14,000 units nationwide in Mary Kay, which includes 715,000 consultants. Her
25 sales topped the \$1.1 million amount the past two years and were over \$900,000 in 2004.
26
27

1 7. Despite all of her stellar accomplishments, including the building and training of her large
2 team of consultants, according to a letter to her from Defendant's in-house counsel dated August
3 10, 2006, a true and correct copy of which is attached as Exhibit 3 hereto, Mary Kay decided to
4 take Plaintiff Robin Blackmon-Dunda's "business" and her "career" away from her and not
5 compensate her for the sales volume her Unit will continue to generate for Mary Kay into
6 perpetuity, simply by giving her thirty (30) days notice of its intent to do so. This attempted
7 forfeiture of Plaintiff Robin Blackmon-Dunda's rights would appear to include her right, already
8 earned, for her to travel, along with her husband, Plaintiff Stryker Dunda, on the 2006 Top Sales
9 Director Trip at the Prestige Level, as was previously confirmed to her by letter from Mary Kay
10 dated July 14, 2006.

11
12
13 8. Mary Kay has failed and refused to withdraw its unilateral decision to terminate Plaintiff
14 Robin Blackmon-Dunda's business and career, without compensation for the residual income
15 stream she built over a period of years, since 1987, which Defendant has purported to forfeit
16 from her in what it claims is its right to do on 30 days notice.

17
18 9. Plaintiff Robin Blackmon-Dunda is an independent contractor business owner, also described
19 in the Sales Director Agreement as an "independent dealer," with all of the property rights that
20 implies. Those rights would include the right to sell or transfer her property, as is the well settled
21 law in Texas as it relates to unreasonable restraints on alienation.

22
23 10. By its conduct, Defendant has failed to give Plaintiff Robin Blackmon-Dunda an opportunity
24 to sell her right to a residual income stream from the sales of the Unit she has spent years
25 building and training has worked a forfeiture of the \$220,000.00 or more annual income
26 generated from her business, including Commissions, Prizes and Awards, not only for her life
27

expectancy but for the reasonable “life expectancy” of the Unit she has created and maintained.

1
2 11. Mary Kay, in misappropriating Plaintiff Robin Blackmon-Dunda’s business will, with
3 reasonable probability, generate tens of millions of dollars of sales and profits from the sales
4 made by her Unit now and into the future. Defendant’s one page letter, a copy of which is
5 attached as Exhibit 3 hereto is an attempt to wipe out Plaintiff Robin Blackmon-Dunda’s rights
6 to her residual income stream for her life expectancy and that of her heirs, which she and they
7 deserve to be paid as a result of developing her business over these many years.
8

9 12. Mary Kay’s contracts with Plaintiff Robin Blackmon-Dunda do not purport to state that her
10 residual income stream will be forfeited should Mary Kay decide to “pull the plug” on her
11 business. Any such “forfeiture clause” would be illegal and unconscionable on its face.
12

13 13. In its 2006 Fact Sheet, a true and correct copy of which is attached as Exhibit 4, Mary Kay
14 holds itself out to its consultants and to the public as enabling its consultants to start their own
15 “independent business” for \$100.00, and encourages consultants to think of themselves as
16 “Entrepreneur” owners of their own “independent business” who are their own “boss” and setting
17 their “own schedule” through its two page promotion entitled “The Mary Kay Business
18 Opportunity (March, 2006),” a true and correct copy of which is attached hereto as Exhibit 5, and
19 indeed, held itself out to the Federal Trade Commission (“FTC”) of the United States
20 government, in a letter from its Senior Vice President & General Counsel dated July 17, 2006, a
21 true and correct copy of which is attached hereto as Exhibit 6, as an upstanding multi-level
22 marketing business which provides legitimate business ownership to its consultants and sales
23 directors, when in fact, it makes a concerted effort to prevent those independent business owners
24 from realizing the benefit of their business ownership should they wish to sell their businesses or
25
26
27
28
29

1 leave them to their families, through a testamentary disposition by will or trust. Mary Kay
2 should not be holding itself out to the FTC as a representative of the interests of its independent
3 business owners, who are entitled to compensation for the residual income streams they have
4 built, a fact and legal requirement which Mary Kay has chosen to ignore. Mary Kay also
5 represents to the public, the income tax collecting arm of the State of Texas, the FTC, and the
6 Internal Revenue Service, as well as to the Courts of this State, on the one hand that its
7 consultants and sales directors are not employees, but on the other hand failing to recognize its
8 independent business owners are entitled to all of the rights of business ownership, including the
9 right to reasonable compensation for their residual income streams upon termination of their
10 businesses, or to give them such time as would be reasonably required to make a transfer of their
11 business for fair value.
12
13

14 14. In letters dated December 29, 2004 and January 27, 2005, true and correct copies of which
15 are attached hereto as Exhibits 7 and 8 respectively, in-house counsel for Mary Kay called
16 Plaintiff Robin Blackmon-Dunda to account for 1) promoting cruise/travel vouchers on her
17 internet website (Exhibit 7) even though she was not holding conference calls during that period
18 of time and never had conducted first and third week of the month meetings as alleged in that
19 letter, and by the time that letter was written Plaintiff Robin Blackmon-Dunda had not used the
20 reference travel vouchers, having stopped doing so six months before the date of the said letter,
21 Exhibit 7, when a representative of Defendant had requested her to stop, and 2) for “sale,
22 promotion and/or distribution” of a training DVD and CD she had allegedly created, to other
23 Mary Kay consultants, when in fact she had not created the subject DVD and CD, which had
24 been created by a National Sales Director, Karen Ford, and when she had, well prior to the date
25
26
27
28
29

1 of Exhibit 8, stopped receiving money for the DVD/CD and was giving it away for free, when it
2 was requested. On April 8, 2005 Plaintiff Robin Blackmon-Dunda was asked to meet with five
3 executives of Mary Kay at its headquarters in Dallas and advised to attend the meeting alone,
4 without even being allowed to bring her husband, Plaintiff Stryker Dunda to the meeting. At the
5 meeting she was threatened with termination by the five representatives of the Defendant and
6 shown a letter of termination (which was not actually given to her) dated for her termination
7 effective April 8, 2005, and told she was being put on indefinite probation and not allowed to
8 teach at Seminar 2005 held in July, 2005, or speak there as the top Director in the company,
9 based upon Exhibits 7 and 8, in combination with a letter sent to her by in-house counsel in 2001
10 alleging a violation of paragraph 8.7 of her contract with the company to the effect that she had
11 placed an order in another person's name without her consent, another letter from in-house
12 counsel dated November 25, 1995 where she had been accused of endorsing the business of a
13 family friend, and an email from her to her Directors discussing the prospects of getting their
14 cooperation in creating their own training DVD, which was never actually created, true and
15 correct copies of which are attached as Exhibits 9 and 10.

16
17
18
19 15. Subsequently, in a letter, a true and correct copy of which is attached as Exhibit 11, dated
20 May 26, 2005 to Mary Kay's Vice President of Sales, Gary Jinks, to which Mr. Jinks did not
21 respond, Plaintiff Robin Blackmon-Dunda graciously and respectfully accepted "the probationary
22 terms" but asked the company to "reconsider one part of [her] punishment, the Day Three 10
23 minute talk" at Seminar 2005 in July in order to "thank and acknowledge [her] Mom and Dad,
24 [her] husband, [her] children, and [her] unit," on an occasion she would rightfully serve as the
25 company recognized "Queen" because of her great accomplishments upon behalf of Mary Kay,
26
27

1 but at which she had been forbidden to speak as a part of the "punishment" doled out by the five
2 company executives in attendance at the April 8, 2005 meeting described above. When the
3 Seminar took place and Plaintiff Robin Blackmon-Dunda was indeed not allowed to give the
4 traditional Queen's speech, consultants in her business unit were, in the words one set forth in a
5 letter to company officials, a true and correct copy of which is attached hereto as Exhibit 12,
6 "saddened," "deflated," "humiliated," "dazed," "confused" and "in tears." Plaintiff Robin
7 Blackmon-Dunda also experienced all of the emotions and feelings referenced in Exhibit 12 as a
8 result of being deprived by Mary Kay of the right to make the short speech thanking those who
9 had helped her succeed, a speech which all consultants in attendance understood was her right
10 according to the company's custom and practice.
11

12
13 16. In yet another letter from in-house counsel dated August 14, 2006, a true and correct copy of
14 which is attached hereto as Exhibit 13, received several days after the date of the 30 day
15 termination letter, Exhibit 3, Plaintiff Robin Blackmon-Dunda, was again chastised by the same
16 company lawyer who had sent Exhibit 3 a few days before, alleging violation by said Plaintiff of
17 Sections 8.6 and 8.10 of her Independent Sales Director Agreement by virtue of being "involved
18 with the sale, promotion, and/or distribution of a hostess apron as well as an instructional DVD
19 [she] created," and that she had "promoted the lending services" offered by a third party, even
20 though she had not mentioned her affiliation with Mary Kay. Defendant sought to deprive
21 Plaintiffs of the ability to sell the hostess aprons even though its executives had expressed
22 approval of the hostess apron on several occasions but had no desire to give credit to Plaintiffs or
23 allow Plaintiffs to take any credit for the idea. Plaintiff Robin Blackmon-Dunda's husband,
24 Plaintiff Stryker Dunda is not bound by the provisions of the Independent Sales Director
25
26
27

1 Agreement signed by his wife, and he was the person who had marketed the hostess apron,
2 selling thousands of them through his website, www.success4me.net . In its multiple letters to
3 Plaintiff Robin Blackmon-Dunda accusing her of, among other accusations, endorsing a family
4 friend and other businesses, and selling training tools and other associated products or services to
5 other Mary Kay consultants, Defendant has wrongfully and unfairly selected Plaintiff Robin
6 Blackmon-Dunda, one of its most devoted, loyal and successful Directors ever, for unwanted,
7 harassing and discriminatory treatment, while ignoring a multiplicity of similar activities by some
8 National Sales Directors and other Sales Directors of Mary Kay.
9

10
11 **COUNT I**

12 **BREACH OF CONTRACTS**

13
14 17. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set
15 forth herein.

16
17 18. Plaintiff Robin Blackmon-Dunda entered into valid contracts with the Defendant to own her
18 own business as a Consultant and Director of the Defendant, attached hereto as Exhibits 1 (form
19 currently used by Mary Kay in lieu of copy of Plaintiff's 1987 contract, which she is unable to
20 locate) and 2, respectively.
21

22 19. Plaintiff performed her obligations under the contracts with the Defendants by building her
23 business over a period of many years, developing her Sales Unit to become one of Mary Kay's
24 largest, and generating millions of dollars in sales of Mary Kay products.
25
26

1 20. The actions of the Defendant in failing to pay Plaintiff Robin Blackmon-Dunda the value of
2 the business upon terminating her as a consultant is a breach of the contracts which are the
3 subject hereof, attached hereto as Exhibits 1 (form currently used by Mary Kay in lieu of copy of
4 Plaintiff's 1987 contract, which she is unable to locate) and 2 respectively inasmuch as they
5 provide that said Plaintiff was to have her own independent business as a Consultant for and
6 Sales Director of the Defendant, and since there was no provision for the company to take her
7 business away from said Plaintiff without compensating her for the value of same.
8

9 21. The provision of the Sales Director contract attached hereto as Exhibit 2 with respect to
10 "Section 13. Assignability" to the extent it unconditionally prohibits transferring of Plaintiff
11 Robin Blackmon-Dunda's business is an unreasonable restraint on alienation, as are the
12 provisions of "Section 10. Termination" to the extent they provide for the Defendant to be able to
13 forfeit the business of a Sales Director upon her termination or death without compensation or
14 being afforded the right to sell or transfer her business, and are therefore illegal and invalid, and
15 thus Plaintiff Robin Blackmon-Dunda should have been given an opportunity to sell or transfer
16 her business, not to have it be forfeited by the Defendant, and Defendant's failure to allow for
17 said Plaintiff's voluntary sale or transfer of said business is an additional breach of the
18 Independent Beauty Consultant and Sales Director contracts, Exhibits 1 (form currently used by
19 Mary Kay in lieu of copy of Plaintiff's 1987 contract, which she is unable to locate) and 2
20 respectively.
21
22

23
24 22. The provisions of the Sales Director contract, Exhibit 2 attached hereto, under Sections 8.6
25 and 8.10 dealing with Director's Responsibilities, which purports to keep Plaintiff Robin
26 Blackmon-Dunda from competing with Mary Kay, from endorsing or from selling non-Mary Kay
27
28
29

1 products to other Mary Kay Consultants during the term of the Sales Director Agreement and for
2 a period of two years from her termination is an unreasonable restraint on trade, and therefore
3 void and unenforceable. Defendant's attempts to enforce same against Plaintiff Robin
4 Blackmon-Dunda and to punish her for endorsing or selling non-Mary Kay products and/or
5 services constitute breaches of her Independent Beauty Consultant Agreement and Sales Director
6 Agreement which are replete with references to her status as the owner of her own business and
7 as an independent contractor. Defendant's attempt to keep Blackmon-Dunda from selling her
8 own or other Director's training DVDs and punishing her for same, as well as its attempt to
9 interfere with her relationship with her husband in the context of her husband, Plaintiff Stryker
10 Dunda's business of selling hostess aprons similarly constitute breaches of the Independent
11 Beauty Consultant and Sales Director Agreements by Defendant Mary Kay.

12
13
14 23. Plaintiffs have been damaged by the Defendant's breaches within the jurisdictional limits of
15 this Court.

16
17 24. By reason of the conduct of the Defendant breaching its contract with Plaintiff Robin
18 Blackmon-Dunda, including enforcing or attempting to enforce illegal and/or invalid provisions
19 of the contracts with her, and then failing to pay her reasonable compensation upon demand
20 made by her attorney for same, Plaintiffs have been forced to retain legal counsel to prosecute
21 this action and are entitled to their reasonable attorneys' fees in prosecuting this action against
22 the Defendant pursuant to Texas Civil Practice and Remedies Code §38.001.
23

24
25 WHEREFORE Plaintiffs pray for Judgment as follows:

- 26 1. Damages sufficient to compensate the Plaintiffs for loss of the value of the business;
27

- 1
2
3
4
5
6
7
8
9
2. Declaring the provisions of Sections 8.10, 10 and Section 13 of the Sales Director Agreement to be void and unenforceable;
 3. Reasonable attorneys' fees;
 4. Costs, and such other and further relief as the Court deems just.

10
11

COUNT II

INTENTIONAL INTERFERENCE WITH CONTRACTS

12
13

25. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set forth herein.

14
15
16
17
18
19
20
21
22

26. Plaintiff Robin Blackmon-Dunda had express contracts with and was the third party beneficiary to those Independent Beauty Consultants she personally recruited and with those Independent Beauty Consultant in her Sales Unit for whom she served as the Independent Sales Director, to be their trainer, leader, and, as required by the terms of her Sales Director Agreement, Exhibit 2, their 'Business Consultant,' "and particularly to offer aid, counsel and inspiration to all independent Beauty Consultants" within her Sales Unit who were to be "counseled by" her.

23
24
25
26
27

27. By terminating Plaintiff Robin Blackmon-Dunda without compensating her for the value of her residual income stream from her business, namely the Sales Unit which she had painstakingly built during her many years owning and building her own business as an Independent Beauty Consultant and Sales Director, and/or by not allowing her to sell or transfer said proprietary

1 business owned by her, Mary Kay has willfully and intentionally interfered with Plaintiff's
2 contractual relationships with the existing members of her Sales Unit.

3 28. The willful and intentional interference with Plaintiff Blackmon-Dunda's contractual
4 relationships with the Independent Beauty Consultants in her Sales Unit has caused her to sustain
5 damages in an amount which are within the jurisdictional limits of this Court.

6 29. Plaintiffs are entitled to punitive damages in a just and reasonable amount as the actions of
7 the Defendant in forfeiting Plaintiff Robin Blackmon-Dunda's business as a Sales Director with
8 Mary Kay, thereby halting the residual income stream she was entitled to as a result of building
9 her own business by recruiting, training, providing business consultation to, and in general,
10 supporting and serving the Independent Beauty Consultants who were members of her Sales
11 Unit, were done with actual malice as a result of Defendant's ill-will, spite, and evil motive
12 toward, and purposeful infliction of injury upon Plaintiff Robin Blackmon-Dunda, all as shown
13 by the repeated, harassing conduct of the Defendant against the said Plaintiff, and by the cavalier
14 way in which it terminated one of the company's most successful, loyal and productive Sales
15 Directors on 30 days notice, without compensating her for the forfeiture of her business, or
16 making it possible for her to sell or transfer it in order to recoup the value of it to her.
17
18
19

20 WHEREFORE Plaintiffs pray for Judgment as follows:

- 21
- 22 1. Compensatory damages sufficient to compensate the Plaintiffs for financial losses
23 incurred as a result of Defendant's interference;
 - 24 2. Punitive damages in a just and reasonable amount;
 - 25 3. Costs, and such other and further relief as the Court deems just.
- 26
27

COUNT III

INTERFERENCE WITH PROSPECTIVE CONTRACTS

1
2
3 30. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set
4 forth herein.

5 31. Plaintiff Robin Blackmon-Dunda built a large organization of Independent Beauty
6 Consultants in her Sales Unit who also recruited and were at the time of said Plaintiff's
7 termination, recruiting additional Independent Beauty Consultants into her Sales Unit, and would
8 continue to do so for many years into the future, or for as long as Mary Kay operates.

9
10 32. There exists a reasonable probability that Plaintiff Robin Blackmon-Dunda would have
11 enjoyed a contractual and/or third party beneficiary relationship, as described in the foregoing
12 paragraphs, with those additional Independent Beauty Consultants who, but for Defendant's
13 interference, would have been recruited into her Sales Unit.

14
15 33. There also exists a reasonable probability that Plaintiffs would have benefited from future
16 sales of the hostess apron.

17
18 34. Through a series of actions taken by Defendant which can best be summarized as unlawful
19 deceptive trade practices, intentional infliction of emotional distress, and defamation, the detailed
20 descriptions of which are set forth in Counts IV, V and VI below, which allegations of
21 independent tortious and unlawful acts are incorporated herein by this reference, the Defendant's
22 have prevented such future relationships from occurring.

23
24 35. The Defendant undertook such actions with a conscious desire to prevent the relationships
25 from occurring, or in the alternative, it knew that the interference was substantially certain to
26 occur as a result of its conduct.

1 36. The Plaintiffs have suffered damages in an amount which are within the jurisdictional limits
2 of this Court.

3 37. Plaintiffs are entitled to punitive damages in a just and reasonable amount as the actions of
4 the Defendant in forfeiting Plaintiff Robin Blackmon-Dunda's business as a Sales Director with
5 Mary Kay, thereby halting the residual income stream she was entitled to as a result of building
6 her own business by recruiting, training, providing business consultation to, supporting and
7 serving the Independent Beauty Consultants who were members of her Sales Unit, and in
8 interfering with the sales of the hostess apron, were done with actual malice as a result of
9 Defendant's ill-will, spite, and evil motive toward, and purposeful infliction of injury upon
10 Plaintiffs.
11

12
13 WHEREFORE Plaintiffs pray for Judgment as follows:

- 14 1. Compensatory damages sufficient to compensate the Plaintiffs for financial losses
15 incurred as a result of Defendant's interference;
16
17 2. Punitive damages in a just and reasonable amount;
18
19 3. Costs, and such other and further relief as the Court deems just.
20

21 **COUNT IV**

22 **DECEPTIVE TRADE PRACTICES**

23 38. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set
24 forth herein.
25
26
27

1 39. As complained herein, Mary Kay has engaged in false, misleading, and deceptive acts and
2 practices, which are unlawful under the provisions of §17.46 of the Texas Business and
3 Commerce Code, in the conduct of its multilevel marketing business.

4 40. In addition to being an independent contractor, entrepreneur and the owner of her own
5 business as a result of her contracts with Mary Kay, Plaintiff Robin Blackmon-Dunda is a
6 consumer of the Defendant's products as that term is defined under §17.45 of the Texas Business
7 and Commerce Code, having purchased thousands of dollars of goods from Mary Kay since
8 1987.

9 41. Mary Kay, among other deceptive practices, has repeatedly represented to Plaintiff Robin
10 Blackmon-Dunda and its other Beauty Consultants and Sales Directors that status as Independent
11 Beauty Consultant and Sales Director affords them the complete ownership of their "own
12 business" which is a deliberate falsehood inasmuch as the Defendant's executives are all well
13 aware of the fact that Mary Kay strictly forbids its Consultants and Sales Directors to sell,
14 transfer or will their "businesses," and enjoys the fruits of the labors of its Consultants and Sales
15 Directors by forfeiture of their right to receive the "income stream" or value of it when they die,
16 leave or are terminated by Mary Kay.

17 42. The intentional false, misleading and deceptive acts which are complained of in this Petition
18 have been committed knowingly, and intentionally, giving rise to damages for mental anguish as
19 well as economic damages suffered by the Plaintiffs herein, as well as up to treble the amount of
20 those damages under the provisions of §17.50 of the Texas Business and Commerce Code.
21
22
23
24
25
26
27

1
2
3
43. Plaintiff Robin Blackmon-Dunda is entitled to be restored to her former position as Sales Director under the provisions of §17.50(b)(3) together with all rights and privileges of complete and full ownership of her own business.

4
5
6
7
8
44. Defendant should be enjoined by this Court under §17.50(b)(2) from engaging in any false, deceptive, and/or misleading acts as are outlawed by Deceptive Trade Practices and Consumer Protection statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of its business.

9
10
11
45. Plaintiffs are entitled to an award of reasonable and necessary attorneys' fees and court costs pursuant to the provisions of §17.50(d).

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
WHEREFORE Plaintiffs pray for Judgment as follows:

1. An order enjoining Defendant Mary Kay from engaging in any false, deceptive, and/or misleading acts as are outlawed by Deceptive Trade Practices and Consumer Protection statutes, §17.46 *et seq.* of the Texas Business and Commerce Code in the conduct of its business;
2. Compensatory damages sufficient to compensate the Plaintiffs for economic losses incurred as a result of Defendant's Deceptive Trade Practices;
3. Treble damages in a just and reasonable amount;
4. Reasonable and necessary attorneys' fees;
5. Restoration of her full rights and status as a Sales Director for Mary Kay along with her rights to receive the income stream generated to her from her business, including any back unpaid commissions there from, also known as her Sales Unit, to which she has a

property interest as a result of her Independent Beauty Consultant and Sales Director
1 Agreements;
2

3 6. Costs, and such other and further relief as the Court deems just.
4

5 **COUNT V**

6 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

7
8 46. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set
9 forth herein.

10 47. The conduct of the Defendant alleged herein was either calculated to cause severe emotional
11 distress to Plaintiff Robin Blackmon-Dunda, or Defendant acted recklessly in doing so.

12 Defendant's executives were well aware of the extensive blogging activities of and concerning
13 Mary Kay on the website, "Mary Kay Sucks," now known as "Pink Truth", and on other
14 websites, knew that the termination of Plaintiff Robin Blackmon-Dunda would become known
15 to that blogging community, consisting primarily of openly disgruntled women who either are or
16 were associated with Mary Kay, as soon as the ink was dry on the termination letter signature and
17 knew or had reason to know that the termination of said Plaintiff would be "spun" on that blog in
18 such a way that both of the Plaintiffs would be repeatedly and mercilessly trashed and disgraced,
19 to the ultimate dismay of Plaintiff Robin Blackmon-Dunda.
20

21
22 48. The conduct of the Defendant in conducting the groundless, harassing, and extremely
23 humiliating witch hunts, inquisitions, and cruel punishments against Plaintiff Robin Blackmon-
24 Dunda, ending with the cavalier, torturous public termination and forfeiture of the business she
25 had spent nearly two decades building, complained of herein, all of which Defendant knew
26
27

1 would subject said Plaintiff to public embarrassment, emotional pain, and permanent damage to
2 her reputation as a first rate Mary Kay Consultant and Sales Director, constitutes extreme and
3 outrageous conduct by the Defendant Mary Kay.

4 49. The actions of the Defendant Mary Kay have caused Plaintiff Robin Blackmon-Dunda
5 severe emotional distress giving rise to damages in an amount which are within the jurisdictional
6 limits of this Court.

7
8 50. Plaintiffs are entitled to punitive damages in a just and reasonable amount as the actions of
9 the Defendant were done with actual malice as a result of Defendant's ill-will, spite, and evil
10 motive toward, and purposeful infliction of injury upon Plaintiffs.

11 WHEREFORE Plaintiffs pray for Judgment as follows:

- 12
13 1. Compensatory damages sufficient to compensate the Plaintiff Robin Blackmon-Dunda for
14 emotional distress suffered as a result of Defendant's intentional infliction of emotional
15 distress;
16
17 2. Punitive damages in a just and reasonable amount;
18
19 3. Costs, and such other and further relief as the Court deems just.

20
21 **COUNT VI**

22 **DEFAMATION**

23 51. The Plaintiffs reallege each and every allegation set forth hereinabove as though fully set
24 forth herein.

25 52. Mary Kay, through its principal executive officers have consistently communicated to the
26 field of Beauty Consultants and Sales Directors contemporaneously with and subsequent to
27

1 previous terminations of Sales Directors for Mary Kay that those terminations were undertaken
2 as a result of what Mary Kay concluded were unethical behavior or financial irregularities which
3 would be viewed by law enforcement authorities as criminal behavior.

4 53. On or around August 29, 2006, a few weeks after the termination letter was sent to Robin
5 Blackmon-Dunda, the president of Defendant Mary Kay, Darrell Overcash circulated a letter
6 addressed to the National Sales Directors of the company, who are in contact with the rest of the
7 Mary Kay field of Beauty Consultants and Sales Directors, in which he attempted to “spin” the
8 termination of Plaintiff Robin Blackmon-Dunda as having resulted from “repeated unsuccessful
9 attempts” to help her “understand she was doing something wrong.” This letter, a true and
10 correct copy of which is attached hereto as Exhibit 14, was preceded and followed by comments
11 to individual Mary Kay Sales Directors implying that when the truth came out about the
12 wrongdoing of Plaintiff Robin Blackmon-Dunda, they would better understand why the company
13 had to terminate her, clearly implying that she had done something of a criminal nature justifying
14 her termination, just as the previous Sales Directors had done something of a criminal nature
15 justifying their termination.

16 54. Defendant Mary Kay’s Overcash’s letter, Exhibit 14 hereto, stating that it was a fact that
17 Plaintiff Robin Blackmon-Dunda had been engaged in wrongdoing in her business relationship
18 with Defendant, and implying she was guilty of criminal wrongdoing, was published to the field
19 of National Sales Directors, and through them, to the entire field of Beauty Consultants and Sales
20 Directors, constituting all of the Mary Kay friends and business associates of the Plaintiff Robin
21 Blackmon-Dunda.

22 55. The statements complained of hereinabove were false and defamatory.
23
24
25
26
27

1 56. Defendant Mary Kay acted knowingly, recklessly, or negligently in publishing the false and
2 defamatory statements.

3 57. Plaintiff Robin Blackmon-Dunda suffered damages as a result of Defendant's conduct in an
4 amount which are within the jurisdictional limits of this Court.

5 58. Plaintiff Robin Blackmon-Dunda is entitled to punitive damages in a just and reasonable
6 amount as the statements of the Defendant were done with actual malice as a result of
7 Defendant's ill-will, spite, and evil motive toward, and purposeful infliction of injury upon
8 Plaintiffs.
9

10
11 WHEREFORE Plaintiffs pray for Judgment as follows:
12

- 13
14 1. Compensatory damages sufficient to compensate the Plaintiff Robin Blackmon-Dunda for
15 emotional distress suffered as a result of Defendant's defamation;
16
17 2. Punitive damages in a just and reasonable amount;
18
19 3. Costs, and such other and further relief as the Court deems just.
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

ROBIN BLACKMON-DUNDA

Robin Dundas
STRYKER DUNDA

SUBSCRIBED AND SWORN TO BEFORE ME on this ^{27th}~~30~~ day of October, 2006, to certify which witness my hand and official seal.

Kaci Cunningham
NOTARY PUBLIC

Kaci Cunningham
Typed or Printed Name

My Commission Expires: 9-18-09



1 Respectfully submitted this 3rd day of ~~October~~ ^{November}, 2006.

2
3 BREWER, ANTHONY & MIDDLEBROOK, P. C.
4 5201 N. O'Connor Boulevard
5 Fifth Floor
6 Irving, Texas 75039-3768
7 (972) 870-9898
8 (972) 870-9053 FAX,
9 dbrewer@bamlawyers.net

10 and

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

12 By: 

13 David G. Eisenstein, Esq.,
14 16980 Via Tazon, Suite B-220
15 Tazon Springs Building
16 San Diego, California 92127
17 (858) 674-1270
18 (858) 674-0870 FAX,
19 Eisenlegal@aol.com
20 *pro hac vice* application pending

21 Attorneys for the Plaintiffs

22 VERIFICATION

23 BEFORE ME, the undersigned Notary Public, on this 27th day of October, 2006,
24 personally appeared ROBIN BLACKMON-DUNDA and STRYKER DUNDA, Plaintiffs herein,
25 who being by me duly sworn upon their oaths, testified that they have read the preceding
26 Plaintiffs' Verified Original Petition, and that its factual averments are true and correct to the
27 best of their information and belief.


28 

EXHIBIT 1

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. 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.
8. 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.
9. 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.
10. 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.

EXHIBIT 2