

# **Web Site Guidelines for Independent National Sales Directors and Sales Directors**

Under Section 5.3 of the Independent National Sales Director Agreement and Independent Sales Director Agreement, (the "Agreement"), each Independent National Sales Director and Sales Director ("Sales Director") agrees to protect the Company from the risks of false, deceptive, misleading or unsubstantiated advertising claims or any unauthorized guarantees, warranties or representations. Additionally, each Sales Director agrees not to use the Company's trademarks or trade names in any type of advertising matter or literature without first obtaining the Company's written permission. Similarly, under Section 8.6 of the Agreement, each Sales Director agrees not to promote, distribute or sell to other members of the Mary Kay sales organization, without Company's prior written approval, any products or services which are not produced, sold or endorsed in writing by the Company. Accordingly, the promotion of a web site to members of the Mary Kay sales force, whether or not for financial gain, is prohibited under the Agreement if the web site makes reference to the Company name, trade name or any Company trademark, or is to be promoted to any member of the Mary Kay sales organization or promoted in any way which utilizes names and addresses of any members of the Mary Kay sales organization obtained by the Sales Director through her association with the Company. In limited circumstances, however, promotion of a web site to members of the Mary Kay sales force by Sales Directors is permissible without Company's prior written approval as long as all of the following requirements are satisfied:

1. The web site is designed and intended to be a communication tool for area/unit members (and adoptees);
2. The web site is accessible only to area/unit members (and adoptees) via a password or other secure measure;
3. Web site content is limited to area/unit educational, motivational and event-scheduling purposes, not pre-screening or recruiting purposes;
4. The web site is original and is authored or produced solely by the Sales Director for area/unit (and adoptee) communication;
5. The web site does not contain copyright protected Company-published material;
6. The web site is accessible by area/unit members (and adoptees) free of charge or free of any other consideration;
7. The Company name and/or trademark(s) are not used in a way that makes it appear to be a Company web site;

8. There is an absence of earnings representations;
9. There is an absence of “tax benefit” representations;
10. There is an absence of inaccurate or unauthorized product claims;
11. There is an absence of statements that imply employment with Company or an agency relationship (please see attachment entitled “Good Business Language”);
12. Appropriate terminology regarding independent contractor status is used (please see attachment entitled “Good Business Language”);
13. There is an absence of price, discount or commission rate information;
14. Any factual information regarding the Company, the marketing plan, its history, sales, earnings, industry position, etc. is properly represented and can be substantiated; and
15. Links to the Company’s web site at *www.marykay.com* are permissible provided it is clear to the web site user that the Sales Director web site is distinct and separate from the Company’s web site.

## **SENSITIVE LEGAL AREAS**

These are areas of activity where incorrect, improper or overreaching statements can potentially have undesirable legal consequences. Unauthorized uses of the “property” of others can create serious legal liabilities. This includes unauthorized uses of individual’s names and images; the names of other companies, organizations and products; and original works created or authored by others, including, but not limited to, writings, music, lyrics, photography and artwork.

The following is a general overview of legally “sensitive areas” which the Sales Director will want to be aware of when creating a web site:

### **1. Control, Supervision, Management and Direction of Independent Salespeople**

Any statement that might be interpreted to ORDER or INSTRUCT Consultants or Sales Directors as to what they MUST do, or any statements that have a dictatorial tone. The independent contractor relationship both the Company and you have with the sales force should be recognized by appropriate acknowledgment of their independence and use of proper terminology when communicating with or about them. For guidance in various area/unit communications, we distribute an information sheet on proper business terminology entitled “Good Business Language.” Please see copy attached.

### **2. Product Performance Claims**

Claims concerning product performance, particularly anything which goes beyond the usual representations of a product’s ability to cleanse, soften, smooth or beautify the appearance of the skin or hair. Claims suggesting any medical benefits or curative powers of any cosmetic product should be carefully avoided except where specifically permitted in the case of those products which are classified as over-the-counter drugs, such as sunscreens. In the case of OTC drug products, claims should adhere to the standardized legally approved wording and should not be embellished.

### **3. Earnings Potential of Salespeople**

Anything that goes beyond general statements concerning the quality of the opportunity offered to Mary Kay Consultants.

### **4. Retail Prices or Pricing**

Any statement that goes beyond the simple mention of suggested retail prices. Any statement which might suggest or imply that it is necessary for salespeople to adhere to any specific retail prices should be carefully avoided.

### **5. Product “Safety” and “Testing”**

Statements concerning product safety, testing results, possible adverse reactions or lack thereof. Such statements are almost inevitably the subject of close examination in product liability cases and, if overstated, can have adverse legal repercussions.

### **6. “Laws,” “Rules” or “Regulations”**

Any statements or representations concerning the interpretation of, compliance or noncompliance with laws, rules or regulations of governmental bodies or the effect thereof upon Company operations or activities of independent salespeople. Example: Any article in a Company publication or communication to the sales force which states in effect “it is illegal to...,” should have Legal Department approval. Generally, it is highly inadvisable to state conclusions about the illegality of any particular act or course of conduct other than in communications issued by the Legal Department.

### **7. Company Sales and Earnings**

Only figures released and authorized for publication and use by the Company should be discussed or used in communications (i.e., the most recent *Mary Kay At-A-Glance*). Unauthorized release of financial information could adversely affect pending Company business and financial negotiations.

### **8. New Consultant Numbers**

Consultant numbers are considered significant by financial analysts. It is the Company’s policy to release new Consultant numbers at only periodic intervals. Unauthorized release or disclosure may adversely affect pending Company business and financial negotiations. Until the Company approves release of a new number, all publications, including correspondence, should employ the last officially released number which is traditionally rounded down and expressed as “more than [number] Consultants” (i.e., the most recent *Mary Kay At-A-Glance*).

### **9. Restrictions or Limitations on Product Resale Rights**

Any statement suggesting or implying that independent salespeople are in any way limited or restricted in their rights to resell products they purchase from the Company in any quantity, assortment or combination to anyone, anywhere, any time, for any price they deem appropriate. There are certain legal limitations on the advertising and promotional use of the Mary Kay name and trademarks, however, the rules in this area are technical. Legal Department guidance regarding communications on problems in these areas is strongly recommended.

## **10. Contracts or Agreements**

Any statement which comments on or interprets the meaning of a provision of a contract or agreement. The Legal Department should be contacted for guidance regarding communications in cases where there are disputes or potential disputes with third parties concerning contract terms.

## **11. Terminations of Agreements with Salespeople**

Any statement dealing with the right or authority of the Company to terminate a business relationship with independent contractor salespeople. It should be generally remembered that agreements with salespeople are terminated, rather than the salespeople themselves as would be the case in an employer/employee relationship. Agreements must be terminated strictly in accordance with the provisions of the Agreements which allow termination.

## **12. Competitors or Competitive Products**

Any statement which compares Mary Kay to any other company or Mary Kay products to any other company's products. It is the Company's policy to avoid disparagement of other competitive companies or their products. Instances where competitors or other third parties disparage our Company or products should be brought to the attention of the Legal Department.

## **13. Income Tax Information or Advice**

Any statement that refers to income tax deductions or the handling of income tax returns, or which makes any mention of the Internal Revenue Service (IRS).

## **14. Deceptive Marketing Methods**

Any statement which suggests the use of any pretense, deception or any other sales technique that might appear ethically questionable (*e.g.*, approaching customers with pretended market "surveys" or any other statement or representation that might be questioned on a factual basis.)

## **15. Contests and Lotteries**

Any suggestion for the use of a consumer contest that would involve the gift or award of a prize of substantial value (*e.g.*, more than \$10.00).

Great care should be taken to adequately and correctly describe prizes and awards to avoid claims of misrepresentation. For example, simulated diamonds or pearls should be clearly identified. Items of jewelry which are gold metal should be identified as plated, filled or, if solid alloy, the degree of fineness (*e.g.*, "14K").

Any contest or "sweepstakes" is potentially dangerous which involves the following: (a) the requirement of a purchase or the payment of valuable consideration to participate ("pay to play" requirement) and (b) the "element of chance" rather than skill (*e.g.*, winner is selected through a random drawing process).

## **16. Use of the “Property of Others”**

Documented permission in the form of an appropriate release or written agreement should be obtained prior to the use of the name or image of any individual. The appropriate form will depend on the relationship of the individual to the Company and intended use. Likewise, the use of the names of other companies, organizations or products may require permission in writing.

Global Legal Resources will be very glad to assist in any instance where there are questions about the implications of statements in any web site that may touch on these “legally sensitive areas.”

## **GOOD BUSINESS LANGUAGE**

In preparing any correspondence or communication to members of the Mary Kay independent sales force or in talking to others about Company business and your business, it is important to use the right business language to avoid misunderstandings or misconceptions. This is particularly true in the case of some words which may have some legal inference that may be quite different from your meaning. We would like to share with you some thoughts and observations regarding the proper terminology which you may wish to use in connection with your Mary Kay business. This will help us avoid misunderstandings with people who are unfamiliar with our manner of operations and will also help you avoid misunderstandings with the people with whom you conduct your business.

As self-employed business people, it is important to you and all Beauty Consultants that your legal status and classification as “independent contractors” be maintained. This classification may affect your ability to take various tax deductions in connection with your Mary Kay business and to receive your full earnings from the Company without withholding tax, etc.

Your freedom to select your own means, method and manner of operation, and to choose the hours and location of your Mary Kay selling activity makes you an independent contractor and sets you apart from an “employee.” All of the Company’s materials, suggestions and involvement is to help and aid you to be a greater success in your own chosen Mary Kay career.

Listed below on the left are certain expressions and/or actions carrying possible legal connotations which are inconsistent with the independent contractor status which you and all members of the Mary Kay sales force enjoy. It is suggested that if any of you are using these expressions loosely without realizing their possible legal implications, such use should be avoided (in your conversation, correspondence, your unit/area newsletters, etc.).

## **EXPRESSIONS**

<u><b>DON'T USE....</b></u>	<u><b>WHEN YOU MEAN...</b></u>
1. hire employ sponsor	recruit
2. fire discharge	terminate agreement
3. agent representative	Independent Beauty Consultant independent salesperson independent contractor
4. supervise control instruct manage direct train	educate motivate assist aid help inform counsel
5. pay wages salary	earnings income profit commissions discounts
6. job work duty employment	career business opportunity profession
7. territory	business area locality
8. require must shall	may recommend
9. require attendance require reports require hours requirements	opportunity to attend suggest reports suggest hours recommendations

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|-----|-----------------------|---|
| 10. | quotas                | prize competition<br>contests<br>extra income or<br>discount opportunities<br>qualifications<br>standards |
| 11. | win a car<br>free car | earn the use of a career car  |