



March 9, 2021

VIA EMAIL

Peter C. Marinello, Director
Howard J. Smith, Attorney
Direct Selling Self-Regulatory Council
112 Madison Avenue, 3rd floor
New York, NY 10016
[REDACTED]

Re: Illegal Income Claims by Mary Kay Inc.

Dear Peter and Howard:

We write to file a complaint with the Direct Selling Self-Regulatory Council against Mary Kay Inc., a Texas-based multi-level marketing company that sells cosmetics and skincare products. For years, Mary Kay and its distributors have been using – and continue to use – deceptive, atypical and unsubstantiated income claims to market the Mary Kay business opportunity. Such marketing materials include claims of participants achieving financial freedom, earning a replacement income, buying their dream homes, quitting their jobs, making six figures per year, retiring their spouses, and earning the iconic Mary Kay pink Cadillac, among other things, when the reality is that the vast majority of Mary Kay distributors are making little to no money in the venture, and most don't ever earn a "free" car.

TINA.org's Findings

TINA.org collected more than 200 examples of unsubstantiated income claims, all of which are available at www.truthinadvertising.org/mary-kay-income-claims/.¹

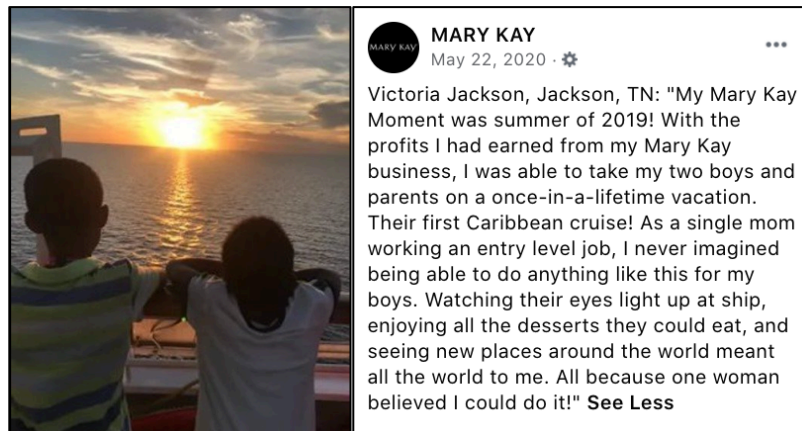
Examples include numerous claims made by Mary Kay directly, as well as those made by distributors. For example, in its FAQs published on its website, Mary Kay tells consumers that the business opportunity allows women to quit their jobs, and pay for family vacations and children's school tuitions.²

▼ How much money can I expect to earn as an Independent Business Consultant?

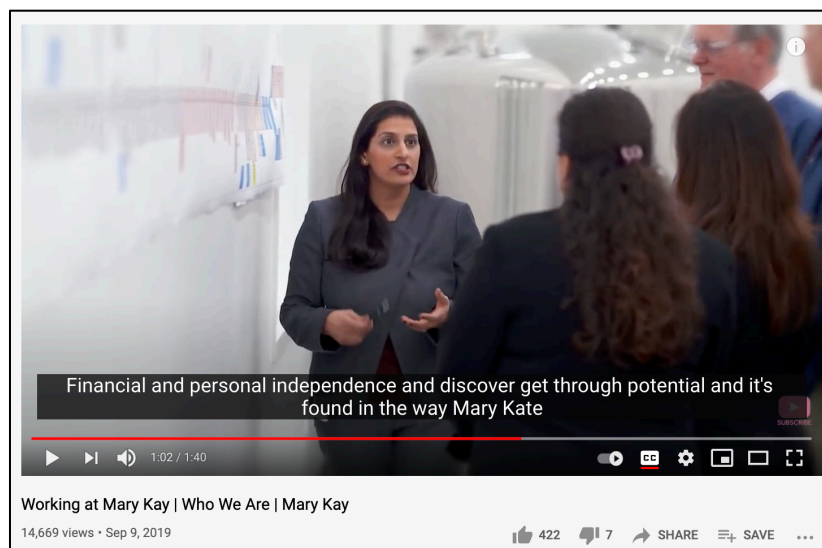
The earning opportunity associated with a Mary Kay business is certainly open-ended; however, it is impossible to guarantee that a particular level of income can be earned. The amount of money you may make as a Mary Kay Independent Beauty Consultant will depend upon many factors, including your personal goals and the amount of time and effort you choose to invest in your business. Many Independent Beauty Consultants operate their businesses on a part-time basis with the goal of meeting short-term financial goals – such as purchasing holiday gifts for their families or paying for a family vacation, school clothes or tuition for their children. Meanwhile, others decide to build their Mary Kay businesses to the point at which it becomes possible for them to quit their jobs and pursue their Mary Kay businesses full time. The bottom line is that how much you earn in your Mary Kay business is strictly up to you. So in the words of Mary Kay Ash, "Set your goals and hang on to them until they are a reality. You've got to believe it before you will ever see it. Whatever the mind can perceive and believe, you can achieve!"

On its Facebook page, Mary Kay features testimonials from distributors claiming the income earned from the Mary Kay business opportunity allowed them to buy a new home,³ pay off a truck,⁴ and pay for a "once-in-a-lifetime vacation" to the Caribbean,⁵ among other things.





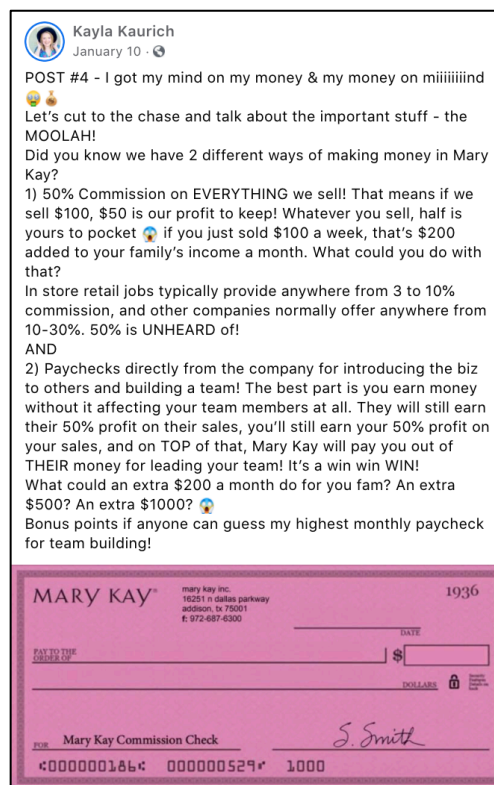
On its YouTube channel, Mary Kay claims that it gives people “the tools and confidence to start their own businesses, support their families, [and] achieve financial and personal independence.”⁶



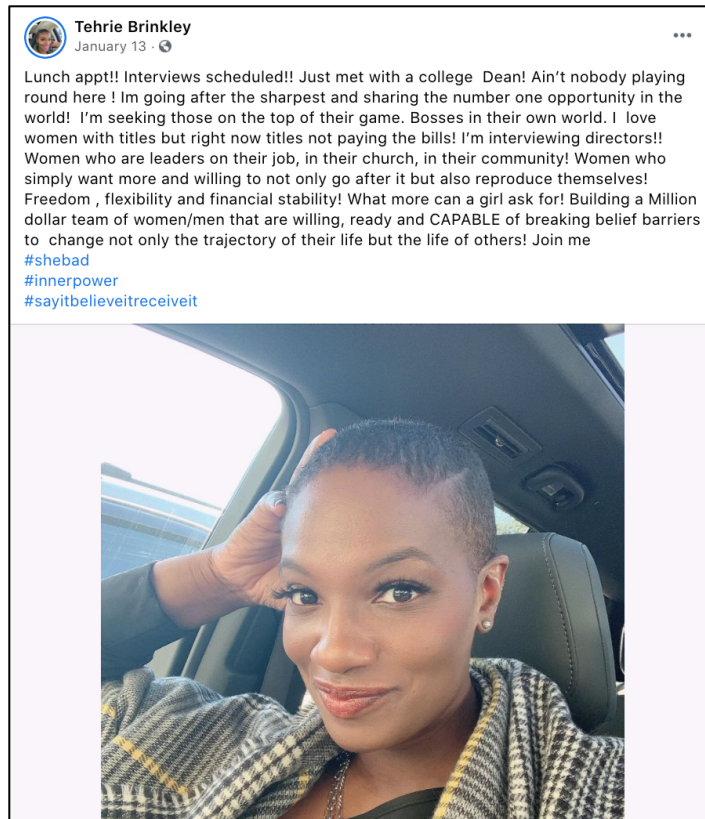
On its Instagram page, Mary Kay touts that its business opportunity leads distributors to the coveted and renowned pink Cadillac.⁷




In light of these bold and widespread claims on the company's various platforms, which the company has been making for years,⁸ it's not surprising that distributors have followed suit, even during the pandemic and resulting financial crisis.⁹



“What could an extra \$200 a month do for you fam? An extra \$500? An extra \$1000? Bonus points if anyone can guess my highest monthly paycheck for team building!”



“Freedom , flexibility and financial stability! What more can a girl ask for! Building a Million dollar team of women/men...”



When: Saturday Feb 13
Time: 10am PST/ 12pm CST
Where: Via Zoom
Free gift for my Guests!
AND be entered to win a FREE
Full size New Clinical Solutions
set

Come Celebrate our very own Ann McKeon at her Director Debut! This Saturday at 10am PST/ 12pm CST
You all are invited and if you're my guest, I have a special gift for you for attending! This is a unique opportunity to peek into our pink bubble and have some fun with us! Please RSVP to me!!

shannonduguay7 • Follow

shannonduguay7 I'm so extremely proud of this girl right here! @annmarie1490 You found a way made a way to change your life drastically during a Pandemic & you did just that!

Please join me for her celebration tomorrow morning via zoom @ 10am!

Your life is changed for the better💖

This is what MK has done for Ann~
 ✨she was let go at the beginning of the Pandemic so now her and Tyler don't have to worry
 ✨she can have freedom and flexibility to work this in and around the things she loves to do
 ✨she can build this so when she

20 likes
 FEBRUARY 12
 Log in to like or comment.

does have kids in the future with @teajcool626 she doesn't have to worry about going back to work (she can love and cuddle that baby so much and not worry about finances since she will have built a successful business & have residual income)
 ✨she will have higher self esteem and confidence because she took many steps out of her comfort zone to get to where she is now & to where she will be going. We get paid for growing and becoming a better version of ourselves.
 ✨she will have a Mary Kay family that will always support her and uplift her! People can't put a price tag on friendships like these 💖

Love you @annmarie1490 and oh so proud of you!

“You found a way made a way to change your life drastically during a Pandemic & you did just that!...she was let go at the beginning of the Pandemic so now her and Tyler don't have to worry[;] ...she can love and cuddle that baby so much and not worry about finances since she will have built a successful business & have residual income...”

No Income Disclosure Statement

None of the examples in TINA.org's sampling include any disclosure of what a typical Mary Kay distributor earns with the company. In fact, Mary Kay does not publish a U.S. income disclosure statement, potentially robbing recruits of information that might help them make an educated decision whether or not to sign up with the company. In refusing to disclose typical earnings, Mary Kay is clearly signaling that it would rather risk it (and distributors) violating the law than coming clean with the truth. The company's decision to hide how much a typical Mary Kay distributor earns (or doesn't earn) in the U.S. ensures that its U.S. distributors will almost certainly violate the law – as they have and are – when they promote the business opportunity using examples of success because they will not be able to counter the atypical earnings claims with the reality of how much the typical distributor earns.

That said, not only has the Federal Trade Commission made clear that most people who join multilevel marketing companies make little or no money, but Mary Kay's income disclosure statement for Canadian distributors (which it publishes pursuant to Canadian law) states that a typical Mary Kay distributor "does not earn any commissions or bonuses."¹⁰ According to a chart that is included in the document, 83 percent of distributors earned nothing in annual commissions in 2019, while 15 percent earned \$206 in annual commissions on average, and less than one half of one percent (0.050 percent) earned, on average, \$124,072. As for the oft-touted Mary Kay car program, distributors do not become eligible to participate in the program until they have reached the Independent Sales Director level, which, according to the Canadian income disclosure statement, only happens for less than two percent of distributors.

TINA.org's Communications with Mary Kay

On March 5, 2021, TINA.org notified the company's Chief Legal Officer of its findings, all of which were published on TINA.org's website and readily available for review.¹¹ In response, Mary Kay indicated that it had reviewed the materials and "believe[s] the net impression of the videos and other materials identified in [TINA.org's] correspondence do not misrepresent the potential of the Mary Kay opportunity" but that they had removed "several assets to avoid any ambiguity or possible misunderstanding."¹² As of yesterday (after Mary Kay's review and letter to TINA.org), 145 of the 200 claims collected by TINA.org in 2021¹³ – or more than 70 percent – remained in publication, including each of the examples highlighted above.

In short, Mary Kay is – and has been for years – deceiving consumers with inappropriate income claims and, faced with such findings, provided a perfunctory response that recites the untenable position that its marketing materials are not generally misleading. As such, TINA.org urges the DSSRC to review the claims being made by Mary Kay and its distributors and take appropriate action.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.



Bonnie Patten, Esq.
Executive Director
Truth in Advertising, Inc.

¹ These findings are a sampling of deceptive income claims in circulation; the database is not a finite list.

² Mary Kay Frequently Asked Questions, <https://www.marykay.com/en-us/sell-mary-kay/faqs>.

In response to another FAQ further down the page, Mary Kay tells consumers, among other things, that they can “replace and/or exceed your income from your full-time job.”

▼ The Mary Kay business opportunity: What does it really take to succeed?

When Independent Sales Directors and Independent National Sales Directors talk about living their dreams, you question just what it takes to get there. You may have heard them talk about the flexibility of a Mary Kay business and how it has enabled them to spend quality time with their families. They can earn such rewards as the use of a Mary Kay Career Car and monetary earnings that perhaps allow them to give up their full-time jobs. How is it possible to have it all?

Make no mistake: These women have worked very hard to get where they are today. When people hear Mary Kay Ash's philosophy of “God first, family second, career third,” they may misinterpret what she meant. Keeping one's priorities in balance doesn't mean you don't have to work hard or make sacrifices to be successful. What does set the Mary Kay opportunity apart from a typical corporate job, however, is that you have more flexibility.

Mary Kay Ash was known for being one of the hardest-working people you'd ever meet. As the founder of what she called the “Five O'Clock Club,” her day began no later than 5 a.m. She chose to sacrifice an hour or two of sleep to achieve a jump start on her day. Many Independent Beauty Consultants choose to join the Five O'Clock Club, but maybe sleep is too precious to you; and you'd rather focus the bulk of your efforts during the second half of the day while your children are in school or on the weekends. The choices are limitless!

By contrast, in corporate America, odds are good that your employer expects you to be at the office, at a minimum, from 9 a.m. to 5 p.m. You probably don't have the flexibility to decide your own work hours.

As a Mary Kay Independent Beauty Consultant, you are your own boss, so you get to decide what time you begin and end your work each day. You determine your own schedule and the rate at which you want to climb the ladder of success. If your goal is simply to supplement the income from your full-time job, the number of hours you devote to your Mary Kay business will likely be relatively small. On the other hand, if you choose to replace and/or exceed your income from your full-time job, you should expect to put in longer hours in order to accomplish that goal.

The point is that you're free to choose your destiny. You determine the balance of faith, family and career that's right for you.

³ <https://www.facebook.com/MaryKay/photos/10158419265882171>.

⁴ <https://www.facebook.com/MaryKay/photos/10158419266512171>.

⁵ <https://www.facebook.com/MaryKay/photos/10158419268162171>.

⁶ <https://www.youtube.com/watch?v=4BhHO-V42Hk>.

⁷ <https://www.instagram.com/p/BwVLo2Yhkij/>. This is just one of more than 75 examples in TINA.org's database that promotes the Mary Kay pink Cadillac.

⁸ See, e.g., <https://www.facebook.com/MaryKay/photos/10154504851527171>.

⁹ See, e.g., <https://www.facebook.com/groups/797288434158492/permalink/800686663818669/>; <https://www.facebook.com/tehrie.ned/posts/10159003779990359>; <https://www.instagram.com/p/CLNfWaNnDZN/>.

¹⁰ FTC: Multi-Level Marketing Businesses and Pyramid Schemes, <https://www.consumer.ftc.gov/articles/0065-multi-level-marketing-businesses-and-pyramid-schemes>; Mary Kay Canadian Statement of Typical Participant Earnings, <https://www.marykay.ca/en-ca/pages/earnings-representation>.

¹¹ See TINA.org's March 5, 2021 letter to Mary Kay, Inc., https://www.truthinadvertising.org/wp-content/uploads/2021/03/3_5_21-letter-from-TINA-to-Mary-Kay.pdf. See also Mary Kay Off-Roads Into Deceptive Income Claims, published Mar. 4, 2021, <https://www.truthinadvertising.org/mary-kay-off-roads-into-deceptive-income-claims/>.

¹² See Mary Kay's March 8, 2021 letter to TINA.org, https://www.truthinadvertising.org/wp-content/uploads/2021/03/3_8_21-ltr-from-Mary-Kay-to-TINA.pdf.

After receiving TINA.org's March 5th letter, Mary Kay removed 13 videos published on its website from some of its top distributors under the heading "One Woman Can Have It All." Excerpts of some of these videos are below:



"When I think about my life now and my goals and what really drives me is the ability to support my family and do the things that we've always wanted to do, to travel, buy our dream home."



"One year after signing my [Mary Kay] agreement I was able to walk away from that corporate job."



"One of the greatest blessings that has come from our Mary Kay business is being able to retire my husband at 32 years old."

Mary Kay's removal of these videos suggests that the company knows it published deceptive marketing materials. However, its apparent refusal to remove all of the deceptive income claims in TINA.org's database, many of which include almost identical language as those Mary Kay has removed, is unacceptable.

¹³ In 2017, as part of its investigation of every DSA-member company at the time, TINA.org collected a sampling of 20+ deceptive income claims used to promote the Mary Kay business opportunity. See <https://www.truthinadvertising.org/mary-kay-income-claims-database/>.