

**BBB NATIONAL PROGRAMS, INC.**  
The Direct Selling Self-Regulatory Council

Case Number: 40-2021 – NGO Inquiry –Mary Kay, Inc.  
Product Type: Cosmetics/Beauty Products/Toiletries  
Issues: Earnings Claims  
Disposition: Modified/Discontinued

**Company Description**

The Mary Kay Inc. (“Mary Kay” or the “Company”) business model is that of a direct sales company, which means Mary Kay products are sold by Mary Kay independent sales force members, person to person, away from fixed retail locations. The Company is headquartered in Dallas, Texas. Mary Kay was founded in 1963 and has an estimated three million independent beauty consultants selling Mary Kay® products in more than 35 markets worldwide.

**Basis of Inquiry**

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. Pursuant to section D(II) of DSSRC’s Policies & Procedures, DSSRC may commence an inquiry regarding the marketing disseminated by a direct selling company and/or its salesforce where the subject claims were referred to DSSRC by the Administrator of the Direct Selling Association’s Code of Ethics, through media reports, or identified by other parties. Here, a nonprofit, non-governmental organization (“NGO”) dedicated to protecting consumers<sup>1</sup> identified certain earnings claims for Mary Kay. Specifically, the NGO brought to DSSRC’s attention certain earnings claims being disseminated on the social media pages of certain independent consultants and on webpages and social media accounts controlled by Mary Kay. It alleged that many of the representations at issue include both express and implied claims that the Mary Kay business opportunity will help individuals earn a significant amount of income and/or enjoy a lavish lifestyle. In the NGO’s initial written submission to DSSRC, it identified approximately 200 examples of such posts or videos.

The representative earnings claims that were the subject of this inquiry include the following:

- “Kimberly Galindo, Fresno, CA: ‘To pick just one photo & caption for this entry from the last 16 years has been quite the challenge! Do I pick taking my children to see their momma’s face in Times Square? Or spoiling my hubby with a cruise to the Bahamas? A Pink Cadillac Pickup Party? While all of those moments have been monumental – there was nothing quite like FINALLY purchasing our BRAND-NEW home. I will always remember the JOY & gratitude I felt that day.’”

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<sup>1</sup> Tina.org

- “Michelle Willis, Sandy, UT: ‘My Mary Kay moment was when my husband opened up his Christmas present in 2018 to find this picture frame. This is my granddaughter holding the title to his truck that I secretly paid off with my Mary Kay business. When the picture fell away there was the title to his dream truck. His free and clear. I also placed a copy of the truck key in a Mary Kay “you hold the key bag” and included that with the title.’”
- “Victoria Jackson, Jackson, TN: ‘My Mary Kay moment was summer of 2019! With the profits I had earned from my Mary Kay business, I was able to take two boys and parents on a once-in-a-lifetime vacation. Their first Caribbean cruise! As a single mom working an entry level job, I never imagined being able to do anything like this for my boys. Watching their eyes light up at ship, enjoying all the desserts they could eat, and seeing new places around the world meant all the world to me. All because one woman believed I could do it!’”
- “There’s nothing quite like driving a Pink Cadillac! ❤️ – Learn more about the Mary Kay opportunity and the amazing things you can accomplish at our bio link”



- “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!” (Accompanied by an image of a blank Mary Kay check)
- “Freedom, flexibility and financial stability! What more can a girl ask for! Building a Million dollar team of women/men...”
- “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...”

- “How much money can I expect to earn as an Independent Business Consultant?”

Many Independent Beauty Consultants operate their business 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 business to the point at which it becomes possible for them to quit their jobs and pursue their Mary Kay business full time.”

About Your **Mary Kay Business**

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

The earning opportunity associated with a Mary Kay business is open-ended; however, it is impossible to guarantee that a particular level of income can be earned. The amount of money you can make as a Mary Kay Independent Beauty Consultant will depend on many factors, including your personal business goals and the amount of time and effort you choose to invest in your business. 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!”

The NGO maintained that Mary Kay and its independent consultants have been using – and continue to use – atypical, unsupported, and unqualified income claims to market the Mary Kay business opportunity. The NGO contended that Mary Kay’s marketing materials include claims of participants achieving financial freedom, earning 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. According to the NGO, the vast majority of Mary Kay independent consultants are making little to no money in the venture, and most don’t ever earn a “free” car.

To illustrate its position, the NGO pointed to the FAQs published on the Mary Kay website, on which it contended Mary Kay tells consumers that the Company business opportunity allows women to quit their jobs and pay for family vacations and for children’s school tuitions.

The NGO noted that none of the posts that it identified to DSSRC include any disclosure of what a typical Mary Kay distributor earns with the company which it maintained deprives recruits of information that might help them make an educated decision regarding whether to sign up with the Company.<sup>2</sup>

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<sup>2</sup> According to the NGO, Mary Kay’s income disclosure statement for Canadian consultants (which it publishes pursuant to Canadian law states that a typical Mary Kay distributor “does not earn any commissions or bonuses” and that pursuant to a chart that is included in the Canadian income disclosure statement, 83 percent of consultants 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. It also noted that as for the oft-touted Mary Kay car program, consultants do not become eligible to participate in the Mary Kay Pink Cadillac 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 consultants.

While acknowledging that Mary Kay reconciled a number of the posts that were brought to its attention prior to the NGO's submission to the DSSRC, the NGO claimed dozens of claims and posts remained unchanged and accessible by consumers including posts that were within the Company's immediate supervision (i.e., its own website and Mary Kay-controlled social media platforms). According to its website, the last audit done by the NGO on the claims and posts identified was May 2021.

The NGO also noted that a number of Mary Kay independent consultants attempted to address DSSRC's concerns by making the posts "private" rather than completely removing the posts from publication. However, the NGO contended that such an action is inadequate because anyone who is invited to view the video/post or is within the private group can still access it, show it to friends, show it at large meetings or conferences, etc., and that it is just as simple to remove the deceptive claim as it is to make it private.

### **Company's Position**

The Company advised DSSRC that it is committed to consumer protection and takes improper earnings representations very seriously. The Company stated that it strongly discourages sales force members from communicating any express or implied income claims.

#### **I. Salesforce Member Posts**

The Company maintained that at the time of the writing of this report all blog posts disseminated by sales force members that were at issue with the exception of one post ("Make-Up with Marni") had been deleted through the Company's efforts. Mary Kay stated that it has contacted the salesforce member responsible for the remaining blog post and will take disciplinary action against the salesforce member should such salesforce member be unresponsive to the Company's request to address the post.

The Company informed DSSRC that at the time of the authoring of this report, all Facebook posts disseminated by Mary Kay independent sales force members that were identified by the NGO have been deleted with the exception of one post from January 2021 that was disseminated by a sales force member located outside of the United States. The Company indicated to DSSRC that it is in the process of contacting the individual to have the post removed.

All Instagram posts from the NGO's database that were disseminated by independent sales force members pertaining to Mary Kay's iconic Pink Cadillac program were deleted by the time of the authoring of this report. Four additional posts were identified by the DSSRC during the pendency of this inquiry, and Mary Kay advised DSSRC that it is in the process of contacting its independent sales force members regarding these posts.

Regarding earning the use of a Pink Cadillac, the Company explained that Mary Kay independent sales force members earn the use of a Pink Cadillac by meeting and exceeding goals set within their Mary Kay businesses. The Company understood the

DSSRC's concerns that it would be reasonable for consumers to interpret unqualified claims and depictions about Mary Kay's Pink Cadillac program as implying that the typical Mary Kay sales force member attains eligibility to participate in the Company's Pink Cadillac program. Given this understanding, the Company committed to exploring the development of disclosure language to include on corporate pages and/ or for sales force members to utilize in social media posts referencing Mary Kay's Pink Cadillac program.

Mary Kay noted that the NGO did not identify any Twitter posts in its original submission. During the pendency of DSSRC's inquiry, two Twitter posts disseminated by independent sales force members were brought to the Company's attention. Mary Kay informed DSSRC that it is in the process of contacting both sales force members regarding these two additional Twitter posts to have the posts removed.

The Company stated that as of the authoring of this report, all YouTube videos identified by the NGO as being disseminated by Mary Kay independent sales force members have been disabled.

## II. Company Posts

Mary Kay agreed to modify the claim stating “[w]hether it's potentially earning a little extra income or making a full-time commitment, the Mary Kay opportunity offers the freedom, flexibility and, of course, the fun that you've been looking for” to remove any express or implied references to financial freedom and the opportunity to earn full-time income” from the Mary Kay blog.<sup>3</sup>

Mary Kay stated that all Company managed Facebook, Pinterest, and Twitter posts that were originally brought to its attention by the NGO have been removed.<sup>4</sup>

Mary Kay maintained that as of the authoring of this report, all Company Instagram posts identified by the NGO have been removed with the exception of one post which features a short video of a woman enjoying the perks from a Company-sponsored cruise for eligible sales force members that was posted in early 2019. Mary Kay originally informed DSSRC that the video was taken down but after learning that the post had not been disabled, expressed its commitment to DSSRC that the post would be expeditiously removed.

Mary Kay disabled all but one of the YouTube posts that originated from the Company. With respect to the remaining video, Mary Kay explained that it is working with an outside production company to edit and to remove the reference to “financial independence” in the video. The video was created with the intended audience of individuals interested in corporate positions at Mary Kay Inc. It was not intended to market

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<sup>3</sup> See <https://blog.marykay.com/en/understanding-the-mary-kay-opportunity>

<sup>4</sup> During the pendency of the inquiry, a second Pinterest post came to the attention of DSSRC which included a reference to salesforce members obtaining “financial freedom” as a result of participating in the Mary Kay business opportunity. Although the post remains active, The Company advised DSSRC that it is in the process of having the post disabled.

the Mary Kay opportunity to potential independent sales force members. Lastly, the DSSRC expressed its concerns regarding problematic income statements on the “Sell Mary Kay” tab of the Company website. The Company advised DSSRC that it is committed to consumer protection and that although it believed the net impression of the materials identified did not misrepresent the potential of the Mary Kay opportunity, the Company would remove or modify the identified content to avoid any ambiguity or possible misunderstanding.

## **Analysis and Recommendations**

Mary Kay was responsive in addressing the posts that were brought to its attention by DSSRC during the inquiry.<sup>5</sup> Of the approximately 200 posts originally identified by the NGO at the commencement of the inquiry, Mary Kay either removed or worked with independent sales force members to remove or restricted access to 189 of the posts to the general public.<sup>6</sup> DSSRC determined that these actions were necessary and appropriate.

### **I. Salesforce Member Posts**

The NGO called DSSRC’s attention to six blog posts that were made by Mary Kay sales force members, all of which included unqualified representations regarding earnings and Company incentives. Mary Kay disabled five of the six posts.

The remaining blog post, entitled “Make-Up with Marni,” discussed how the sales force member got started with Mary Kay and how she was able to “pick up her Pink Cadillac.”

DSSRC remained concerned that Company incentives such as a car bonus or incentive trip reward would not be generally expected or achievable by the typical Mary Kay sales force member and, as such, DSSRC recommended that Mary Kay work with the sales force member responsible for the blog post to either remove reference to the Pink Cadillac or include a disclosure regarding the number of independent Mary Kay consultants who have received or who are eligible to receive the Mary Kay car incentive.

With respect to posting on various social media platforms, all but one of 34 Facebook posts that were disseminated by Mary Kay sales force members were disabled during the inquiry. More specifically, 31 of the consultants’ Facebook posts can no longer be accessed by the general public and two were designated as password-protected or private. The two posts now marked as “private” appear to remain accessible to members

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<sup>5</sup> While the DSSRC expressed its appreciation to Mary Kay for its good faith efforts to address the specific posts at issue in this inquiry, it also noted that the posts identified were illustrative of the type of core messages that have been communicated by the Company on various online platforms. DSSRC was encouraged by Mary Kay’s responsiveness to the concerns at issues in this inquiry and its commitment to monitor similar posts which may continue to be disseminated on social media and to continue to train its salesforce members regarding untruthful and inaccurate earning claims.

<sup>6</sup> During the pendency of the inquiry, the NGO submitted additional posts to DSSRC that Mary Kay addressed or was in the process of addressing.

in that particular Facebook group and one password-protected post has a pre-filled password that connects to the original post when the “continue” box is clicked. This post communicates a claim of career level income (i.e., “\*Income\*: Profits depend on your effort. Are you looking for a side hustle or a whole new career? You decide!”). DSSRC concluded that this post should be completely removed from Facebook.

As noted in the Federal Trade Commission’s (“FTC”) 2018 Business Guidance Concerning Multi-Level Marketing “Business opportunities may claim that participants, while not necessarily becoming wealthy, can achieve career-level income. They may represent through words or images that participants can earn thousands of dollars a month, quit their jobs, ‘fire their bosses,’ or become stay-at-home parents. If participants generally do not achieve such results, these representations likely would be false or misleading to current or prospective participants.”<sup>7</sup>

With respect to the two Facebook posts designated as “private,” Mary Kay committed to DSSRC that it would take the necessary steps to have the posts disabled in their entirety so that the original content could not be viewed by any users of the platform.<sup>8</sup> Accordingly, while it may not have been the intention to perpetuate continued dissemination of these posts, DSSRC requested that the Company take such actions to assure that these posts be completely disabled so that they are no longer available to even a limited or exclusive group of individuals.

Mary Kay also worked with its independent sales force to disable almost all of the 47 Instagram posts that originated from sales force members and which were identified by the NGO at the commencement of the DSSRC inquiry.<sup>9</sup> The remaining 5 Instagram independent sales force member posts which had not yet been disabled at the time of this report and which were of concern to DSSRC all involved unqualified descriptions of Company incentives – four of which included unqualified reference to the Company’s Pink Cadillac program.

In addition to guidance provided by the FTC in 2018 regarding the promotion of company incentives made by sales force members, DSSRC has stated in past decisions that for purposes of a DSSRC inquiry, an earnings claim is any claim, express or implied, that conveys that sales force members may earn or have earned company-sponsored incentives, including representations that suggest the ability to make lifestyle purchases

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<sup>7</sup> See <https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing>

<sup>8</sup> Mary Kay noted that while going through the list of posts that were disseminated by Company consultants, it appeared that there was a technological issue with Facebook that hindered total deletion of some of those older posts. Facebook subsequently released intermittent information to Mary Kay during the pendency of the inquiry confirming that several posts had been removed, not hidden, not searchable, etc. Notwithstanding this update, the Company reiterated its commitment to have the remaining posts that were labeled private or which were password protected removed in their entirety.

<sup>9</sup> DSSRC determined that one of the Instagram posts that was submitted by the NGO did not include any problematic earnings claims.

– such as homes, vehicles, vacations – that are related to income earned from direct selling.<sup>10</sup>

DSSRC remained concerned that incentives such as a car bonus reward would not be generally expected or achievable by the typical Mary Kay consultant and, as such, a disclosure of general expectations regarding the Company incentive would be necessary.

It is DSSRC recommended that the Company qualify such posts with the inclusion of material information such as consultant eligibility for the car program and the number or percent of Mary Kay salesforce members that have achieved this incentive. DSSRC further recommended that the Company disable any existing, unqualified social media posts that feature Mary Kay's Pink Cadillac program until such time that appropriate qualifying information can be included in the posts.<sup>11</sup>

Additionally, the NGO called DSSRC's attention to 32 YouTube videos which originated from Mary Kay independent sales force members that included unsupported earnings claims. During the pendency of the inquiry, the Company informed DSSRC that it had worked with sales force members and restricted access to 30 of the YouTube videos from the general public.

DSSRC recognized the efforts of Mary Kay to address DSSRC's concerns and disable almost all of the videos at issue. Nonetheless, seven of the YouTube videos that were disseminated by Mary Kay independent consultants were marked "private" or were password protected. DSSRC remained concerned that such posts which included atypical and unqualified earnings representations about the Company's business opportunity could be easily shared or socialized with select invitees. As DSSRC noted in a recent matter involving videos that were designated as "private" by a direct selling company, "[w]hile the videos are no longer available on the internet to a general audience of consumers, DSSRC cautioned the Company that because these videos included claims that were unrepresentative and not appropriately qualified, these videos should not be disseminated to even a limited audience in the context in which they were originally communicated on the Company's public YouTube channel."<sup>12</sup>

With respect to these private or password protected videos, DSSRC recommended that Mary Kay take appropriate steps to assure that posts or videos cannot be shared or redistributed in their original context with even a limited audience. Most social media platforms such as YouTube and Facebook provide options for content

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<sup>10</sup> See Case #24-2020 -NGO Inquiry- Le-Vel Brands LLC and Case# 12-2020 - Aloette Cosmetics

<sup>11</sup> DSSRC recognized that Mary Kay was in the process of communicating with its salesforce members to reconcile several posts that remained accessible to the general public and continued to make modifications to language on the Company controlled webpages. However, as the Company contemplates replacement or additional qualifying language for such statements or posts, it cannot be ignored that the claims nevertheless remain active and may be relied on by consumers. As such, DSSRC recommends that Mary Kay remove such posts or claims until such representations are removed or modified accordingly.

<sup>12</sup> See Case #27-2020 -Monitoring Inquiry- LurraLife, LLC, footnote #4.



creators to simply delete an existing post as opposed to making it password protected or private and thus still accessible for select individuals.

At the time of this recommendation, two YouTube videos that were disseminated by Mary Kay independent beauty consultants remain completely accessible to the general public.<sup>13</sup> In the first video, a Mary Kay consultant makes an unqualified reference to driving a Mary Kay Pink Cadillac and also states that Mary Kay sales force members can choose to either work part time and “put a few hundreds of dollars in their pocket a month” or, conversely be “all in” if they want more choices with time and more choices with finances.” As noted in the above section of this decision which addressed Mary Kay’s Instagram posts, DSSRC is concerned that incentives such as a car bonus or incentive trip reward would not be generally expected or achievable by the typical Mary Kay consultant and, as such, a disclosure of consumers’ general expectations regarding the Mary Kay Pink Cadillac program would be necessary. Moreover, DSSRC determined that the reference to being “all in” on the Mary Kay business opportunity when coupled with income potential could be reasonably interpreted by consumers and potential recruits as meaning that the typical Mary Kay salesforce member can typically expect to earn “full-time” or significant income – i.e., an amount of income that allows financial and time freedom.

The second unaddressed YouTube which originated from a Mary Kay independent sales force member features the Company’s Pink Cadillac program and includes statements that “[t]he money resides right here at Mary Kay” and references “freedom and flexibility” in the Mary Kay business opportunity. Again, the video includes no disclosures regarding eligibility for the car program or information about the number of Mary Kay consultants who have participated in the car program. DSSRC determined that reference to money and time and flexibility could be interpreted as meaning that the typical independent consultant will earn significant income. Accordingly, DSSRC recommended that Mary Kay either discontinue the two remaining consultant YouTube videos or significantly modify the videos to remove unqualified references to the Pink Cadillac program and time and financial freedom. Lastly, the fact the consultant videos were disseminated by sales force members and not Mary Kay itself had no bearing on DSSRC’s determination that videos should be modified or discontinued.<sup>14</sup>

During the pendency of this inquiry, the NGO identified two Twitter posts disseminated by Company sales force members which included claims that Mary Kay consultants can achieve financial freedom and earn full time income. According to section

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<sup>13</sup> These YouTube videos were not part of the NGO’s original submission.

<sup>14</sup> Section 255 (2)(b) of the FTC’s Guide on the Use of Endorsements and Testimonials in Advertising (the “FTC Guides”) states that “[a]n advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser’s experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.

6 of the DSSRC Guidance on Earnings Claims for the Direct Selling Industry while DSSRC will evaluate any claim based upon the context in which the claim appears and the potential net impression of such claim to the audience, some words and phrases commonly used in earnings claims can carry a particularly high risk of being misleading to consumers. Such words and phrases include claims such as “financial freedom,” “full-time income,” “replacement income,” “residual income,” and “career-level income.” Accordingly, DSSRC determined that here, the unqualified claim of Mary Kay independent sales force members receiving financial independence and supporting their families through a Mary Kay business reasonably communicated that the typical Mary Kay consultant could earn significant, income through the Company’s business opportunity. Accordingly, DSSRC recommended that Mary Kay request that the independent sales force members responsible for the claims disable the two Twitter posts.

## II. Company Posts

Mary Kay removed all 25 of the Company Facebook posts that were brought to its attention by DSSRC at the commencement of the inquiry and all 5 Company Twitter posts. In addition, the only Instagram post disseminated by the Company that was not addressed by Mary Kay at the time of this recommendation, and which is still available to the general public, featured a short video of a Company incentive trip to the Bahamas in 2019. DSSRC remained concerned that this incentive trip would not be generally expected or achievable by the typical Mary Kay consultant and recommended that the post as presented in its current, unqualified context should be discontinued or modified until such time that the appropriate, material information is included in the post.

With respect to the 13 Company YouTube videos that were provided to DSSRC by the NGO, Mary Kay restricted public access to 12 of the videos by making them private. While DSSRC appreciated the efforts of Mary Kay to address DSSRC concerns and remove almost all of the Company YouTube videos from being accessed by the general public, DSSRC remained concerned that the private videos which included atypical and unqualified earnings representations about the Company’s business opportunity could be easily shared or socialized with select invitees. As DSSRC noted in a recent matter involving videos that were designated as “private” by the direct selling company, “[w]hile the videos are no longer available to on the internet to a general audience of consumers, DSSRC cautioned the Company that because these videos included claims that were unrepresentative and not appropriately qualified, these videos should not be disseminated to even a limited audience in the context in which they were originally communicated on the Company’s public YouTube channel.”<sup>15</sup>

The one Company YouTube video that remains publicly accessible, is a 2019 video that includes a representation stating that Mary Kay empowers sales force members to “live the life they choose...giving them the tools to live the life they choose, support their families [and] achieve financial and personal independence.” During the pendency of the inquiry, Mary Kay advised DSSRC that the video was created with the

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<sup>15</sup> See Case #27-2020 -Monitoring Inquiry- LurraLife, LLC, footnote #4.

intended audience of individuals interested in corporate positions at Mary Kay Inc. It was not intended to market the Mary Kay opportunity to independent sales force members. As noted earlier in the section of this decision pertaining to social media posts disseminated by Company salesforce members, earnings claims such as “financial freedom,” “full-time income,” “replacement income,” “residual income,” and “career-level income can carry a particularly high risk of being misleading to consumers.

While DSSRC recognizes that the Company did not intend for this human resources video to be disseminated to a broad (i.e., non-corporate) audience, the video remains accessible on YouTube to the general public and, as such, DSSRC remained concerned that it would not be unreasonable for potential Mary Kay independent sales force members to interpret the claims in the video to mean that the typical Mary Kay independent salesforce member can earn significant, life changing income from the Mary Kay business opportunity. As such, DSSRC recommended that Mary Kay either modify the video to remove this portion or disable the video in its entirety.

As it pertained to the Mary Kay website and other online materials over which the Company exercised editorial control, while DSSRC recognized that Mary Kay made several changes to its website during the pendency of the inquiry, DSSRC remained concerned with several existing statements regarding potential salesforce income.

For example, the FAQ section of the “Sell Mary Kay” tab of the Company website<sup>16</sup>, states: “[How much money can I expect to earn as an Independent Business Consultant?](#) - The earning opportunity associated with a Mary Kay business is open-ended.” It is further stated that “...the amount of money you can make as a Mary Kay Independent Beauty Consultant will depend on many factors, including your personal business goals and the amount of time and effort you choose to invest in your business.” It is a long-standing principle of advertising that an advertiser has the burden to support any reasonable interpretation of its claims<sup>17</sup> and DSSRC determined that the reference to “open-ended income” that is predicated on the effort of the salesforce member reasonably communicates the message that the earnings potential for Mary Kay salesforce members is unlimited if the salesforce members is prepared to dedicate the necessary time and effort and that this message is inconsistent with the results achieved by the typical Company sales force member.

Similarly, in the “Blog” section of the Mary Kay website<sup>18</sup>, the Company states that “Whether it’s potentially earning a little extra income or making a full-time commitment, the Mary Kay opportunity offers the freedom, flexibility and, of course, the fun that you’ve been looking for.” Another Company controlled webpage<sup>19</sup> states: “You’ve got dreams.

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<sup>16</sup> <https://www.marykay.com/en-us/sell-mary-kay/faqs>.

<sup>17</sup> [Colgate-Palmolive Company \(Colgate Optic White Toothpaste\)](#), Report #5490, *NAD/CARU Case Reports* (July 2012); [Hisamitsu America, Inc. \(Salonpas Pain Relief Patch Large\)](#), Report #6918, *NAD/CARU Case Reports* (February 2021).

<sup>18</sup> <https://blog.marykay.com/en/understanding-the-mary-kay-opportunity>.

<sup>19</sup> <https://www.marykay.com/en-us/sell-mary-kay>

Whether it's the potential to earn a little extra cash or making a full-time commitment, the Mary Kay opportunity offers the freedom, flexibility and, of course, the fun that you've been looking for."

DSSRC recommended that Mary Kay immediately remove these and any other any implied or express references to full-time income and financial and time freedom or language that could reasonably imply unlimited income potential from the Company webpages.

### **Conclusion**

DSSRC expressed its appreciation to Mary Kay for its responsiveness and good faith efforts to address DSSRC's concerns in this inquiry. Of the approximately 200 posts that were originally identified by the NGO, Mary Kay either removed or restricted public access to 189 of the posts that were originally brought to its attention. DSSRC determined that these actions were necessary and appropriate.

Notwithstanding the Company's efforts to restrict the access of several DSSRC posts and videos to the general public, DSSRC recommended that posts and videos which were password-protected or designated as "private" also be removed in their entirety so that they are no longer available to an even limited or exclusive group of individuals in the context in which they were originally presented.

Several of the remaining posts and claims at issue referenced Company rewards including incentive trips and Mary Kay's Pink Cadillac program. DSSRC remained concerned that Company incentives such as a car bonus or incentive trip reward would not be generally expected or achievable by the typical Mary Kay sales force member and, as such, it is recommended that Mary Kay either remove reference to the Pink Cadillac and trip incentives or include a disclosure regarding the number of Company consultants who have received or who are eligible to receive such incentive rewards.

Finally, as outlined above, the Company's marketing materials still include unqualified statements regarding the significant income that Mary Kay sales force members can earn, including references to open-ended income, financial and time independence and full-time income opportunities. Accordingly, DSSRC recommended that Mary Kay immediately remove any remaining implied or express references to full-time income and financial and time freedom or language that could reasonably imply unlimited income potential from Company webpages.

### **Company Statement**

"Mary Kay takes consumer protection very seriously. The Company devotes significant time and resources to proactively monitor, review, and address the concerns outlined within the NGO's original submission to the DSSRC. To avoid any ambiguity or possible misunderstanding regarding the income potential of the Mary Kay opportunity, the Company commits that all the corporate assets and social media posts identified will be appropriately remedied or removed. In addition, publications by independent sales

force members identified have also been removed. Further, those independent sales force members have been appropriately contacted, educated, and where necessary, addressed. The Company is also committed to ensuring that proper disclosures regarding the Pink Cadillac program are available for individuals interested in learning more about the Mary Kay opportunity.”

Case No. #40-2021 PCM (closed on 7/16/2021)  
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