

BBB NATIONAL PROGRAMS

THE DIRECT SELLING SELF-REGULATORY COUNCIL

Mary Kay, Inc.

Case No. 61-2022

Filed 2/9/22

COMPLIANCE REPORT

I. Company Description

Mary Kay, Inc.'s ("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 salesforce 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

II. Background

The Direct Selling Self-Regulatory Council ("DSSRC") is a national advertising self-regulation program administered by BBB National Programs. In 2021, DSSRC resolved an inquiry submitted by a non-governmental organization¹ regarding the dissemination of earnings claims communicated by Mary Kay salesforce members and on the Company website. Mary Kay did not dispute DSSRC's concerns regarding the claims at issue in that inquiry and conceded that such claims should not have been disseminated. As a demonstration of its commitment to advertising self-regulation, Mary Kay removed or significantly modified almost 200 earnings claims that were disseminated by its salesforce members and on company blogs and websites. Mary Kay also facilitated the removal of unauthorized statements from inactive or former salesforce members.

In response to the concerns raised by DSSRC, the Company stated that it is committed to consumer protection, strongly discourages salesforce members from communicating earnings representations, and that its compliance staff would continue to follow up to ensure adherence to Mary Kay's Policies and Procedures. Accordingly, in its decision, DSSRC recognized the Company's good faith efforts while recommending that Mary Kay or its promoters remove any remaining implied or express references to full-time income, financial and/or time freedom, or language that could reasonably imply unlimited income potential from company webpages.

1 www.TINA.org

The Company Statement that was included in DSSRC's report stated:

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.

During the 2021 inquiry, DSSRC informed Mary Kay that it would continue to monitor the messages disseminated by the Company's promoters on social media and would take prompt and necessary steps to initiate a compliance inquiry should it identify an ongoing proliferation of unsupported earnings claims disseminated by Mary Kay and/or Mary Kay salesforce members.

III. Compliance Inquiry

As part of its compliance process, DSSRC will independently review advertising that has been the subject of previous inquiries and determine if the direct selling company has made a good faith effort to abide by DSSRC's recommendations and adhere to the commitment expressed in its Company Statement. DSSRC recently identified six social media posts through its monitoring that communicated the unqualified message that Mary Kay salesforce members can typically earn significant income from the Company's business opportunity.

DSSRC contacted Mary Kay and asked the Company to provide an update on the actions it had taken to adhere to the Company's commitment to comply with the recommendations made by DSSRC in its 2021 decision. DSSRC also inquired about the six newly identified social media posts that were disseminated by salesforce members that included similar earnings claims to those that were the subject of the 2021 DSSRC inquiry. The social media posts at issue in this compliance inquiry included, but were not limited to, the following claims disseminated on social media:

- "I love that you can have freedom and flexibility – side gig or full-time business with Mary Kay."
- "With just \$30 you can earn 4-5 figure passive, residual income."
- "What would you do with extra income – big or small."
- "Sign up for as low as 49£ and make your way to financial freedom."
- "You can make residual or passive income."
- "If you are looking for an opportunity for a potential avenue of income, a change of career.... join the MARY KAY EXPANSION and earn BIG INCOME."

IV. Company's Position

In its response to DSSRC's compliance inquiry, Mary Kay reaffirmed its commitment to industry self-regulation and pledged to continue to actively monitor and remove non-compliant earnings claims from the marketplace.

In response to DSSRC's concerns regarding the social media posts identified in this compliance inquiry, Mary Kay provided DSSRC with a spreadsheet detailing the specific actions it had taken to address each of the posts. The Company indicated that it been in contact with four of the salesforce members responsible for the social media posts (which included one YouTube video) and that all four posts have been removed. With respect to the two remaining posts, Mary Kay informed DSSRC that it sent multiple correspondence to the salesforce members, but the individuals have been unresponsive. More specifically, Mary Kay stated that it is in the process of terminating its relationship with one salesforce member who failed to respond to the Company's take-down request. The remaining post was disseminated by a former salesforce member located in the United Kingdom (UK). The Company contacted its UK subsidiary and sent correspondence to the individual requesting the removal of the post. However, the individual responsible for the post failed to respond to the correspondence.

As a demonstration of its good faith efforts, Mary Kay provided DSSRC with copies of the correspondence sent to the individuals responsible for the two remaining posts, stating that the Company's policy is that salesforce members should not under any circumstance talk about how much they earn with their Mary Kay business online or on social media, and that company policy also prohibits salesforce members from making representations about the earning potential of a Mary Kay business.

V. Compliance Determination

DSSRC recognized and appreciated the good faith actions that were taken by Mary Kay to address the social media posts DSSRC brought to its attention. The Company did not attempt to substantiate the earnings claims at issue and acknowledged that the claims disseminated by the Mary Kay salesforce members did not adhere to the Company's Policy and Procedures. While the Company was able to effectuate the removal of four of the posts, it also demonstrated that it had attempted to contact the salesforce members who were responsible for the two remaining posts.

As DSSRC has noted in previous self-regulatory inquiries, when a direct selling company is made aware of improper claims that were made by an individual that was not within its geographical control or who was an active salesforce member when such claim was made but that has since become an inactive salesforce member of the company, DSSRC acknowledges that the direct selling company may not be able to require such salesforce members to remove a social media post. In that instance, DSSRC nonetheless recommends that the direct selling company make a bona fide good faith effort to have the improper claim removed.² Accordingly, DSSRC has concluded that by facilitating the

² Le-Vel Brands (Case#57-2021); Gano Excel USA, Inc. (Case #30-2020); Daxen, Inc. (Case #52-2021).

removal of four social media posts and making a due diligent effort to contact the individuals responsible for the two remaining posts that the Company has made a good faith effort to adhere to DSSRC's recommendations from its 2021 decision.

DSSRC does note that if the social media platform where the subject post was made provides a mechanism for reporting trademark or copyright violations, DSSRC recommends that Mary Kay promptly utilize such mechanism and seek removal of the subject claims and posts. If efforts to utilize a mechanism for reporting trademark or copyright violations are unsuccessful or if the subject claim occurred on a website or platform without a reporting mechanism, DSSRC further recommends that the Company contact the website or platform in writing and request removal of the subject claim or post.

DSSRC expressed its appreciation to Mary Kay for its prompt attention to this matter and determined that the good faith actions taken by the Company to remove the earnings claims at issue were necessary and appropriate.

DSSRC will continue to monitor the online and social media advertising for claims made regarding the income that can be expected by salesforce members who participate in the Mary Kay business opportunity to ensure that the dissemination of unsupported earnings claims is not a systemic issue.

VI. Conclusion

DSSRC recognized the good faith actions taken by Mary Kay in the spirit of voluntary self-regulation and the appropriate and prompt steps resulting in the discontinuation of four of the social media posts at issue. DSSRC further concluded that the Company made a genuine, bona-fide attempt to contact the two individuals responsible for the two posts that remain publicly accessible by consumers. DSSRC also recommended that Mary Kay utilize Facebook's mechanism for reporting trademark or copyright violations and seek removal of the remaining posts and if such efforts are unsuccessful that the Company contact the website or platform in writing and request removal of the posts.

(Case No. 61-2022, PCM closed on 02/09/22)

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