

Appeals Court Upholds \$41M Ruling Against Mary Kay

By **Sara Stefanini** , sara.stefanini@portfoliomedia.com

Friday, January 12, 2007 --- A U.S. appeals court judge has upheld a lower court's decision to award TriStrata Technology Inc. \$41 million in its drawn-out patent case against makeup retailer Mary Kay Inc. over ingredients used in a skin care product.

The federal circuit on Jan. 9 confirmed a jury's finding in March 2005 that Mary Kay should pay TriStrata, a subsidiary of NeoStrata Co., more than \$26 million in backend royalties for allegedly infringing on several of the dermatological company's patents.

After TriStrata returned to court to seek interest, the total amount went up to \$41 million.

"TriStrata has developed pioneering technology," said Jan Conlin, an attorney from Robins, Kaplan, Miller & Ciresi LLP, which represented the Delaware-based company. "This case illustrates the importance of the patent system in protecting such technology."

Mary Kay said it was disappointed by the decision.

"Mary Kay contended throughout these proceedings that it used technology different from that of Tristrata," the company said Thursday. "Unfortunately, the judge did not agree with Mary Kay's position."

TriStrata originally filed the lawsuit in 2001, accusing Mary Kay of using its patented alpha hydroxy acid skin care technology.

Originally, TriStrata was seeking more than \$50 million, but the jury determined a lower settlement despite TriStrata's detailed damages request.

The court also blocked Mary Kay from infringing on three patents that were part of the case.

TriStrata, which holds more than 125 patents relating to alpha hydroxy acids and other skin care technologies, has licensed its patents to 40 companies in the cosmetics and pharmaceutical industries, including Avon Products Inc., Beiersdorf AG, L'Oreal, Elizabeth Arden Inc., Johnson & Johnson and Chanel Inc.

In court papers, TriStrata said the cosmetics outlets "refused to recognize" five TriStrata patents which describe how alpha hydroxy acids treat aging

skin by accelerating cell renewal.

Privately held TriStrata sued 11 cosmetics outlets in February 2001 for allegedly selling a patented skin treatment for wrinkles without paying for a license.

TriStrata was founded by Drs. Ruey Yu and Eugene Van Scott, who are widely recognized as pioneers in the alpha hydroxy acid skin care technology and who are the inventors of more than 80 patents related to alpha hydroxy acid technology.

Other companies sued by TriStrata include Walgreen Co., Rite Aid, CVS Inc., Long's Drug Stores and Victoria Principal Productions Inc.

TriStrata also won a patent infringement suit against Valeant Pharmaceuticals International, formerly ICN Pharmaceuticals, when a jury found that seven claims of the two patents at issue were willfully infringed.

In addition, TriStrata filed a motion for a permanent injunction with the court to prohibit sales of infringing products, including Valeant's Glyquin product lines.

The allegedly infringed patents in that case cover the use of alpha hydroxy acids to enhance the therapeutic effect of other substances.

TriStrata was represented by Michael V. Ciresi and Conlin of Robins, Kaplan, Miller & Ciresi LLP and by Kevin M. McGovern and Brian T. Foley of McGovern & Associates.

The case is *Tristrata Technology v. Mary Kay Inc.*, case no. 1:01-cv-00127-JJF, in the U.S. District Court for the District of Delaware.