

## Mary Kay To Pay \$40M Over Wrinkle Cream Patent

*Thursday, April 06, 2006* --- Makeup retailer Mary Kay Inc. has been ordered by a jury to pay TriStrata Technology Inc. \$40 million for allegedly infringing patents for its skin care remedy used to treat wrinkles.

TriStrata, a subsidiary of NeoStrata Co., originally filed the lawsuit in 2001, accusing Mary Kay of using its patented alpha hydroxy acid technology.

In March 2005, a jury ordered Mary Kay to pay more than \$26 million in backend royalties to Delaware-based TriStrata. TriStrata returned to court to seek interest on that amount.

The total verdict amounts to \$40 million, according to Jan. M. Conlin, a partner with Robins Kaplan Miller & Ciresi LLP.

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

The pre-judgment interest will be calculated based on the prime lending rate, compounded quarterly since Feb. 1, 1995, and the post-judgment interest is at 4.77%, compounded annually from the order date, according to Conlin.

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.

"TriStrata has license agreements with many skin care companies, and they will continue to enforce their patents. This case illustrates just how strongly juries favor our patent system and the lack of tolerance for infringement," Conlin said.

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 relating to alpha hydroxy acid technology.

In addition to Mary Kay, some 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.

TriStrata also 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.

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