

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

COTY INC.,

Plaintiff,

v.

HARVEY P. ALSTODT; BRUCE C.
KOWALSKY; DIVERSIFIED BEAUTY
PRODUCTS (f/k/a MBA BEAUTY, INC.); and
HARVEY P. ALSTODT ASSOCIATES, INC,

Defendants.

Index No.

VERIFIED COMPLAINT

Plaintiff Coty Inc. (“Coty”) by its attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, alleges for its Complaint against Harvey P. Alstodt; Bruce C. Kowalsky; Diversified Beauty Products, Inc. (f/k/a MBA Beauty, Inc.) (“MBA”); and Harvey P. Alstodt Associates, Inc. (“HPAA”) (collectively “Defendants”), as follows:

NATURE OF THE CASE

1. This is action arises from Defendants’ flagrant and egregious violation of their non-compete obligations owed to Coty.

2. In December 2007, Coty, one of the world’s largest beauty companies, spent hundreds of millions of dollars to acquire DLI Holding Corp. (“DLI”) and all of its cosmetics brands, including the market-leading and extremely valuable Sally Hansen brand of nail care products. At the time of the transaction, Harvey P. Alstodt was a Director of DLI and the President of DLI’s subsidiary, Del Cosmetics, the portion of the company that controls the Sally Hansen brand. Kowalsky was Del Cosmetics’ Head of Sales for North America

responsible for maintaining DLI's relationships with many of the largest retail companies in the United States, including CVS, Rite Aid, and Walgreens.

3. Given their key positions within DLI, through which they enjoyed access to DLI's most sensitive business information and most important industry contacts, Defendants Alstodt and Kowalsky each agreed to and were compensated for entering into reasonable noncompetition covenants. Both of them reaffirmed those covenants in agreements made with Coty directly after its purchase of DLI.

4. As a result of Coty's purchase of DLI, Defendants Alstodt and Kowalsky were extremely well-compensated. Alstodt received over \$5 million dollars from the sale of his ownership interest in DLI. He also received over a million dollars in severance and signed a consulting agreement with Coty that paid him \$450,000 a year in exchange for his obligation not to compete in the marketplace with Coty. Likewise, Kowalsky received tens of thousands of dollars from the sale of his interest in DLI. Kowalsky also signed a new noncompetition agreement with Coty, became the National Sales Vice President, received a retention payment for doing so, and continued to receive his annual salary of \$250,000.

5. Unfortunately, Coty has recently learned that both Alstodt and Kowalsky are blatantly ignoring their noncompetition obligations. Alstodt—who is still employed as a consultant by Coty and receiving monthly checks for approximately \$37,000—has formed his own cosmetics company and hired Kowalsky to work for him.

6. Alstodt's competing venture, in which he initially sought to hide his involvement, is currently engaged in an effort to undermine a new and extremely profitable Sally Hansen line of nail color products by selling a similar product line through a nationwide retailer that is a major distributor of Sally Hansen brand products. Alstodt has only been able to

accomplish this by making use of his unique industry experience, his knowledge of Coty's product line, and his contacts within the beauty and retail industries. In other words, Alstodt, with Kowalsky's assistance, is doing to Coty the very thing that his noncompetition obligations were intended to protect Coty against.

THE PARTIES

7. Plaintiff Coty is a Delaware Corporation with its principal place of business in New York, NY.

8. Defendant Harvey P. Alstodt is an individual with residences at 224 Grand Pointe Dr., Palm Beach Gardens, FL 33418-4629 and 50 E. 89th St., Apt. 27C-E, New York, NY 10128-1225.

9. Defendant Bruce C. Kowalsky is an individual residing at 49 Colby Dr, Dix Hills, NY 11746-8352.

10. Defendant MBA—since July 20, 2010 known as Diversified Beauty Products Inc., Inc.—is a Delaware corporation, with its principal place of business at 4400 Northcorp Pkwy, Palm Beach Gardens, FL 33410. MBA is the owner of the “Confetti” and “10” trademarks for nail color.

11. Defendant HPAA is a Florida corporation with its principal place of business at 142 Windward Dr., Palm Beach Gardens, FL 33418. Upon information and belief, Mr. Alstodt resided at the 142 Windward address from April 2005 until May 2010.

JURISDICTION AND VENUE

12. This Court has general personal jurisdiction over Alstodt and Kowalsky because of their ownership, use, and/or possession of real property in New York, their extensive business dealings in New York, and their employment with DLI and Coty in New York. This

Court has specific jurisdiction because this dispute arises, in part, from breaches of employment and noncompetition agreements executed in New York.

13. This Court has personal jurisdiction over Diversified Beauty Products and HPAA under C.P.L.R. § 302 and because the companies are mere alter egos for Alstodt.

14. Venue is proper in New York County, as this is the county in which Coty's principal office is located.

15. Assignment of this case to the Commercial Division is proper because the case involves, *inter alia*, breach of contract claims, and the amount in dispute is well over \$150,000.

BACKGROUND

16. Founded in 1904, Coty is now one of the world's largest fragrance companies and a recognized leader in global beauty with annual net sales exceeding \$3.5 billion, selling its products to consumers in 91 markets worldwide.

17. On or about December 7, 2007, Coty purchased DLI, the parent company of Del Laboratories, Inc. ("Del Labs"). Del Labs was a leading developer, manufacturer, and marketer of cosmetics and over-the-counter pharmaceuticals.

18. Through the merger, Coty acquired DLI's brands, including Sally Hansen, N.Y.C. New York Color, Sally Hansen/La Cross, Orajel, and Dermarest.

Alstodt's Employment Agreement

19. At the time Coty purchased DLI, Alstodt was the President of Del Cosmetics and a Director of DLI. In that position, Alstodt oversaw all aspects of the development, manufacturing, marketing, and sales of Sally Hansen brand nail color.

20. Additionally, Alstodt was responsible for maintaining and growing DLI's goodwill among its business partners as a responsible, reliable provider of quality products. Alstodt created and maintained, both during his time as President of Del Cosmetics and after stepping down, significant contacts in the cosmetics and retail industry, including with Tom Ryan, the Chief Executive Officer of CVS.

21. As President of Del Cosmetics, Alstodt was working pursuant to an "Amended and Restated Employment Agreement," dated December 18, 2007 (the "Alstodt Employment Agreement").¹ A copy of the Alstodt Employment Agreement is attached hereto as Exhibit A.

22. Under Section 7 of the Alstodt Employment Agreement, Alstodt expressly made several covenants and promises regarding competition with DLI. The specific provisions containing these covenants and promises are as follows:

7. Noncompetition, Confidentiality, and Non-Solicitation

(a) Noncompetition. During the Employment Period and . . . during the 18-month period following such termination of Executive's employment, (the applicable period, the "**Restriction Period**"), Executive shall not become associated as a principal, partner, employee, consultant or shareholder . . . of any business that is actively engaged in any geographic area in which the Company or any of its subsidiaries does business during the 12 months preceding Executive's termination of employment in any business which is in competition with the business of the Company or any of its subsidiaries conducted during such period[,] or any business proposed to be conducted by the Company or any of its subsidiaries in the Company's business plan as in effect as of the date of termination of Executive's employment

¹ As President, Alstodt agreed to "devote all of his business time to the services required of him . . . and [to] use good faith efforts to perform the duties of his employment to the best of his ability" and to refrain from engaging in activities that were "competitive with . . . [or] conducted with or for, directly or indirectly, any entity that is in competition with, the business of [DLI] or any of its subsidiaries is actively considering." *Id.* at § 2(a).

(b) Confidentiality. After the Employment Period . . . Executive shall not, without prior written consent of the Board, disclose any trade secrets, customer lists, drawings, designs, information regarding product development, marketing plans, sales plans, manufacturing plans, management organization information . . . , operating policies or manuals, business plans, financial records, packaging design or other financial, commercial, business or technical information relating to the Company or any of its subsidiaries or information designated as confidential or proprietary that the Company or any of its subsidiaries may receive belonging to suppliers, customers or others who do business with the Company or any of its subsidiaries (collectively, “**Confidential Information**”) to any third person unless such Confidential Information has been previously disclosed to the public by the Company or is in the public domain (other than by reason of Executive’s breach of this Section 7(b)). During the Employment Period, Executive will disclose Confidential Information only for the benefit of the Company and in accordance with any restrictions placed on its disclosure by the Company.

23. To protect DLI from Alstodt competing unfairly with it following his termination, Alstodt specifically agreed that his “covenants and obligations . . . with respect to noncompetition, nonsolicitation, [and] confidentiality . . . relate to special, unique and extraordinary matters and that a violation or threatened violation of any of the terms of such covenants will cause the Company irreparable injury for which adequate remedies are not available at law.” Alstodt Employment Agreement § 7(g). Thus, Alstodt conceded that “the Company [would] be entitled to an injunction, restraining order or such other equitable relief (without the requirement to post bond) restraining [him] from committing any violation of the covenants or obligations contained in this Section 7.” *Id.*

Alstodt’s Consulting Agreement

24. Coty’s purchase of DLI was a windfall for Alstodt. With a change in control of DLI, Alstodt’s right to terminate the Alstodt Employment Agreement vested, and he exercised that right on or about January 4, 2008.

25. As a shareholder of DLI, Alstodt received more than \$5 million from the sale of DLI and its attendant goodwill to Coty.

26. Alstodt's "golden parachute" opened and entitled him \$1.35 million (three years of his annual compensation of \$450,000) paid to him over eighteen months, a \$450,000 year-end bonus in 2008, and the continuation of his employment benefits.

27. On or about January 1, 2008, Alstodt entered into an agreement with Coty that provided for Alstodt to remain as the President of Del Cosmetics until June 30, 2008, "pursuant to [his] Existing Employment Agreement," and then to serve as a consultant for Coty until December 31, 2010 (the "Consulting Agreement"). A copy of the Consulting Agreement is attached hereto as Exhibit B.

28. The Consulting Agreement provided that from June 30, 2008 until December 31, 2010, Alstodt would "serve as Senior Advisor to the President" of Coty. Consulting Agreement § 4(b)-(c).

29. The Consulting Agreement revised Alstodt's noncompetition period and extended it until December 31, 2010:

During the Consulting Period, [Alstodt] shall not be employed by or perform services for any color cosmetics, beauty implements and/or bleach/depilatories company that is engaged in direct or indirect competition with the Company or any of its subsidiaries (in any geographic area in which the Company or any such subsidiary does business). The "Restriction Period" referred to in your Existing Employment Agreement shall terminate at the commencement of the Consulting Period and the Existing Employment Agreement is modified accordingly.

Consulting Agreement § 4(f).

30. Alstodt's noncompetition obligation is no greater in geographic or temporal scope—only those areas where Coty does business and for 18 months—than is required

for the protection of Coty's legitimate interests and the hundreds of millions of dollars it spent to purchase DLI.

31. In May 2008, approximately a month before the end of Alstodt's employment at Coty, Alstodt created HPAA, his consulting company. At Alstodt's request, the compensation owed to Alstodt in his personal capacity under the Alstodt Employment and Consulting Agreements has been paid to HPAA.

32. One of Alstodt's main duties as a consultant was to serve when called upon as an ambassador to vendors, suppliers and at trade shows for Coty and its brands. Alstodt has submitted tens of thousands of dollars in reimbursement requests to Coty for expenses he allegedly incurred while acting on Coty's behalf, including reimbursements for meetings with top CVS executives ostensibly on Coty's behalf.

33. In addition to the \$1.35 million in severance and \$450,000 bonus Alstodt received from Coty, Coty has paid to Alstodt approximately \$37,000 per month under the Consulting Agreement. To date, Alstodt has received over \$800,000 in fees or compensation under the Consulting Agreement.

34. For a number of months, Alstodt received monthly payments from Coty *in excess of \$100,000* under both the Alstodt Employment and the Consulting Agreement.

Kowalsky's Noncompetition Agreement

35. At DLI, Kowalsky was the Head of Sales for North America and was responsible for selling nail color lines to all of the major retail chain stores, including but not limited to CVS, Rite Aid, and Walgreens. In this capacity, Kowalsky developed close connections to many of the top executives in many, if not all, of the leading retail chain stores in North America.

36. On September 20, 2007, Kowalsky signed a Change in Control Agreement (the “Kowalsky Employment Agreement”) with Del Labs, under which he agreed he would “not become associated as a principal, partner, employee, consultant or shareholder . . . that is actively engaged in any business that is competitive with those of the Company or any of its subsidiaries as in effect on the date of termination of employment.” Kowalsky Employment Agreement § 6. A copy of the Kowalsky Employment Agreement is attached as Exhibit C.

37. After Coty’s purchase of DLI, Kowalsky agreed to remain with the company as Coty’s National Sales Vice President.

38. On December 1, 2008, Kowalsky signed a separate noncompetition agreement with Coty—a prerequisite for him remaining as an executive after the acquisition—that imposed a non-compete obligations upon Kowalsky in addition to those in the Kowalsky Employment Agreement with Del Labs (the “Kowalsky Noncompetition Agreement”). A copy of the Kowalsky Noncompetition Agreement is attached as Exhibit D.

39. Under the Kowalsky Noncompetition Agreement, Kowalsky agreed to the following:

4. Non-Competition.

(a) During the Term of Employment and that period which immediately follows the Term of Employment and is equal in duration to such Term of Employment (but being in any event not less than six (6) months nor more than twelve (12) months), the Executive will not, without the written consent of the Company, on Executive’s own behalf or for a Competing Organization, either as principal, agent, consultant, employee, officer, director, or otherwise, engage in any work or other activity which competes in any way with the Company (i) in or directly related to the specific areas or subject matters in which the Executive worked during the Term of Employment, or (ii) involving or directly related to Confidential Information of which the Executive became aware or to which the Executive had access during such employment. The Executive shall consult the Company before entering upon any activity which might violate the provisions of this Section, it being

understood that the Executive's activities shall be limited hereby only to the extent that is reasonably necessary for the protection of the Company's interests for a period determined by the Company in accordance with this Section. It is further understood that such interests will normally require that, for a period determined in accordance with this Section, the Executive not engage in work or other activity as defined above.

40. In the same agreement, Kowalsky "acknowledge[d] and agree[d] that [Coty] has no adequate remedy at law for a breach or threatened breach of any of the provisions of the [Kowalsky Noncompetition] Agreement, and, in recognition of this fact, Executive agrees that, in the event of such a breach or threatened breach, the Company will suffer irreparable harm that cannot be adequately compensated by money damages." Kowalsky Noncompetition Agreement § 9.

41. Kowalsky further "agree[d] that, in addition to any remedies at law, [Coty] without posting any bond and without notice to [Kowalsky] shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may be available." *Id.*

42. Kowalsky resigned from Coty effective September 30, 2009.

43. Since Kowalsky worked for more than twelve months at Coty, Kowalsky's noncompetition period is twelve months in duration and lasts until September 30, 2010.

44. Kowalsky's noncompetition obligations under both the Kowalsky Employment and Noncompetition Agreements are no greater in geographic or temporal scope—only those areas where Coty does business and for 12 months—than is required for the protection of Coty's legitimate interests and the hundreds of millions of dollars it spent to purchase DLI.

45. Kowalsky worked with Alstodt for approximately 20 years, and, upon information and belief, is a close personal friend of Alstodt.

46. Upon information and belief, Kowalsky is currently working at HPAA and is involved with selling the “Confetti” and “10” lines of nail color in direct violation of the Kowalsky Noncompetition Agreement.

Coty’s Brand Sally Hansen is the Market Leader in Nail Color

47. The cosmetic nail care industry is extremely competitive. In 2000, Sally Hansen brand nail color had approximately a 15.6% dollar share in the mass cosmetics market, which includes mass retailers, drug store chains, and food store chains. Today, the brand Sally Hansen now exceeds 50% market share. In the nail care business Sally Hansen brand nail color products enjoy extraordinary brand awareness with consumers.

48. The purchase of DLI was a watershed moment for Coty, a significant global fragrance company. Through its acquisition of DLI, Coty approximately doubled the value of its cosmetics business.

49. The Sally Hansen line currently sells more shades of nail color than any of its competitors and for the past three years has had a majority of the top 25 shades sold by number of units. Marketing research has shown that consumers praise Sally Hansen products for their efficacy—hence the brand’s slogan, “Beauty That Works.”

50. To remain competitive in this market, Coty and its competitors must and do continually engage in research and development to improve their existing products and to develop new ones. Similarly, they continually develop new colors, marketing, pricing, communication, distribution, and other strategies to stay competitive.

51. Coty dedicates significant resources to product innovation and consumer research to develop products with new features that resonate with consumers, and it strives to be first-to-market with these products. This first-to-market status not only allows Coty to enjoy increased sales during the “exclusivity period” before competitors can launch copycat products, but it also solidifies Coty’s consumer mindshare: Consumers think of Coty’s brands as innovators.

52. Coty primarily sells its nail color products to mass retailers like Wal-Mart, and to major drug store chains like Walgreens, CVS, and Rite Aid. Coty has devoted significant efforts to develop and maintain its relationships with these and other significant retailers.

Coty’s Launch of Complete Salon Manicure

53. Beginning in June 2008—a time when Kowalsky was still employed at Coty and Alstodt was in the midst of his consultancy—Coty attempted to enhance the Sally Hansen brand’s status as a trendsetter in nail color by developing the Complete Salon Manicure (“CSM”) sub-brand.

54. CSM is a line of Sally Hansen brand nail color that provides the five steps of a professional manicure—base coat, growth treatment, nail strengthener, color, and top coat—into one formula while offering a panoply of colors. In this manner, CSM is similar to other “all-in-one” cosmetic products, such as toothpastes that provide whitening, anti-microbials, fluoride, and a breath-freshener, shampoos that also include conditioner, or self-tanning lotion that also contains moisturizers and SPF protection.

55. Coty intended this strategy not only to promote the Sally Hansen brand as a color leader in the marketplace, but also to show the industry that Coty had integrated DLI into

its business strategy and was aggressively growing the business. Proof that the significant DLI integration would succeed was and is important to Coty's reputation in the industry.

56. From June 2008, Coty spent countless hours, massive resources, and millions of dollars to create, advertise, promote, and distribute its CSM line.

57. In April 2009, at the National Association of Chain Drug Stores' annual meeting, Coty announced "the biggest nail color launch ever," stating that it expected the new line to earn \$25 million in retail sales its first year.

58. On December 1, 2009, retail chain stores like CVS began selling CSM.

59. By April 2010, the results of Coty's investment in the launch were apparent: the Sally Hansen brand had realized an all-time high in share of the nail color market. At that time, CSM was the number one new beauty care product year-to-date.

The "Confetti" and "10" Products

60. In mid-June 2010, Coty employees noticed displays for two new nail color lines at CVS stores — "Confetti" and "10." The displays said the two products were made by "MBA Beauty" in Florida.

61. When Coty employees began analyzing the "Confetti" and "10" lines they realized an unusually high number of colors were exact matches to Sally Hansen brand shades:

- There are 48 shades of "Confetti"; 13 of those shades are exact matches of CSM shades. Another 22 of the 48 "Confetti" shades are exact matches for other non-CSM Sally Hansen brand shades.
- There are 36 shades of "10"; 14 of those shades are exact matches of CSM shades. Another 10 of the 48 "10" shades are exact matches for other non-CSM Sally Hansen brand shades.

62. In total, 35 of 48 "Confetti" shades and 24 of 36 "10" shades are drawn from the Sally Hansen line. A staggering 59 of the 82 shades in the two brands—almost 3 out of every 4—were matches to Sally Hansen brand products.

63. In the nail color market, it's not uncommon for companies to attempt to capitalize on popular colors by bringing similar shades to market—but it is unusual at a minimum for a company to single out *one* competitor and duplicate a significant portion of its line of color offerings. Slavishly imitating nearly 3 out of every 4 colors from a single competitor exceeds the norm and industry custom.

64. Upon information and belief, “Confetti” and “10” are the only products that have matched CSM shades so closely since the latter’s launch and the only line of which nearly three out of every four shade are slavish imitations of Sally Hansen brand shades.

Alstodt’s and Kowalsky’s Breach of their Covenants Not to Compete

65. Upon information and belief, Alstodt had been preparing to violate his Consulting Agreement for some time, but by no later than February 3, 2010, he began to execute his scheme to unfairly compete against Coty.

66. On February 3, 2010, MBA’s incorporation papers were filed in Delaware by Alstodt’s accountant, Ronald M. Simons, of N. Cooper & Co., 2182 Nostrand Ave., Brooklyn, NY 11210.

67. On information and belief, the acronym “MBA” stands for “Melody B. Alstodt,” Alstodt’s wife.

68. On July 20, 2010, MBA changed its name to “Diversified Beauty Products Inc.”

69. Upon information and belief, MBA and HPAA are mere fronts for Alstodt, who is carrying on the business of these corporations in his personal capacity for purely personal rather than corporate ends.

70. Upon information and belief, Alstodt has exercised and continues to exercise complete domination over both MBA and HPAA, such that neither corporation has a separate mind, will, or existence of its own. Both have been used as a vehicle to circumvent Alstodt's noncompetition covenants with Coty and to hide his involvement in the production of "Confetti" and "10." Coty has been injured as a result of Alstodt's misconduct and abuse of the corporate form.

71. On March 16 and March 18, 2010, respectively, MBA filed trademark applications for the "Confetti" and "10" marks for nail polish products. In MBA's application, Alstodt swore under penalty of perjury that he was the President of MBA and that MBA had the intent to use these marks in commerce for nail polish products.

72. Upon information and belief, during or before August 2009, Alstodt and/or individuals working on his behalf or in concert with him, developed a plan to use their inside information to slavishly imitate many CSM and Sally Hansen brand shades in order to bring substantially similar products to the market in a fraction of the time it would take another company.

73. It is customary in the mass market cosmetic industry for retail chains to determine a year in advance which new products will be given shelf space in their stores. Thus, products like "Confetti" and "10" must be pitched long before they actually ship.

74. Upon information and belief, Alstodt and Kowalsky, while under contract to Coty, used the contacts they developed while working for DLI and/or Coty and the associated goodwill of these companies to sell the "Confetti" and "10" brands of nail color to CVS. Further upon information and belief, they continue to use these contacts, goodwill and confidential

information obtained through their employment with Coty in an attempt to sell nail color products to other retail chain stores including, but not limited to, Rite Aid.

75. Upon information and belief, millions of “Confetti” and “10” brand bottles must have been shipped to CVS’s warehouse in or about May 2010 as the CVS retail stores by mid-June 2010.

76. Upon information and belief, Kowalsky met with Rite Aid on August 10, 2010 to pitch “Confetti,” “10,” or other brand(s) of nail color.

77. Upon information and belief, Kowalsky worked and continues to work with Alstodt to develop, produce, and distribute “Confetti,” “10,” and/or other brands of nail color.

78. Upon information and belief, in late 2009, Alstodt or those working with him or on his behalf, used contacts and goodwill acquired by Alstodt and Kowalsky at Coty to prepare a large quantity of bottles of “Confetti” and “10” brand nail color. Upon information and belief, such efforts relied on Coty’s contacts and/or goodwill relating to production, bottling, labeling, and logistics.

79. Alstodt and Kowalsky have received significant financial benefits in exchange for the covenants not to compete at issue. Alstodt has received over \$800,000 in compensation. Kowalsky has received not only hundreds of thousands in compensation related to his employment, but also tens of thousands of dollars from the from the sale of his shares in DLI. Additionally, Coty has reimbursed Alstodt tens of thousands of dollars in expenses, including for meetings with CVS executives. Finally, Alstodt received over \$5 million from the sale of his shares in DLI.

Irreparable Harm

80. As both Alstodt and Kowalsky conceded in their respective agreements, Coty is entitled to an injunction to enforce their noncompetition covenants and obligations, as Coty has no adequate remedy at law, cannot be adequately compensated by money damages, and will suffer irreparable harm if these provisions are not specifically enforced.

81. Alstodt and Kowalsky's actions have caused irreparable harm to the goodwill that Coty paid hundreds of millions of dollars for when it purchased DLI and its brands, including Sally Hansen.

82. Defendants' Confetti and 10 products undercut sales of the highly promoted launch of new Sally Hansen brand shades by offering identical shades at a lower price, as it is industry knowledge that some consumers "trade down" and choose the less expensive brand if they perceive the colors to be identical.

83. By virtue of their long experience in the nail color industry, Alstodt and Kowalsky were uniquely positioned to compete with Coty following their departure, and this is precisely the reason that Coty required them to sign noncompetition agreements as a condition of their employment.

84. Alstodt's and Kowalsky's breaches of their noncompetition have caused and will continue to cause Coty to lose customers, not just a sale, to "Confetti" and "10." As a result, Alstodt and Kowalsky have irreparably harmed the good will that it has built up over the years in the Sally Hansen brand.

85. On information and belief, "Confetti" and "10" have sold about 466,000 units, or about \$1.1 million of sales (in wholesale value), at CVS since their launch in June 2010.

And beyond the raw sales data, the number of Sally Hansen customers that have been permanently lost is not quantifiable.

86. Moreover, the injury to the Sally Hansen brand as an innovator, occurring from an illegally premature and massively imitative source is difficult, if not impossible to quantify. If Alstodt and Kowalsky are not enjoined, Coty's considerable investment into growing the Sally Hansen brand's goodwill and brand equity will continue to be impaired irreparably.

87. The possibility that Coty's relationships with its customers will be disrupted increases as long as Defendants' illicit conduct continues unrestrained. Indeed, Alstodt and Kowalsky may be attempting to expand "Confetti" and "10" into additional retail outlets. On information and belief, Kowalsky is scheduled to meet with Rite-Aid or has done so already.

88. Moreover, Alstodt and Kowalsky have and are continuing to exploit DLI/Coty's goodwill to grow MBA's brands. By contacting the same retail outlets that carry Sally Hansen brand products, Alstodt and Kowalsky did not need to establish MBA as a reliable, responsible provider of quality products.

89. Instead, trading on the relationships that Coty *paid them to maintain*, Alstodt and Kowalsky are attempting to secure easy and illegally premature toeholds into the retailers that carry Sally Hansen brand products. Moreover, such efforts pose a significant risk that the Sally Hansen brand will suffer from reduced shelf space, resulting in a virtually incalculable loss of goodwill, profits, and consumer perception in the nail color industry.

CAUSES OF ACTION

COUNT I—AGAINST ALSTODT **(Breach of the Consulting Agreement)**

90. Coty repeats and realleges each of the foregoing allegations as though fully set forth herein.

91. The Consulting Agreement is a valid and enforceable contract.

92. Under the Consulting Agreement, Alstodt was prohibited from being employed by or performing services for any color cosmetics, beauty implements and/or bleach/depilatories company that is engaged in direct or indirect competition with Coty before December 31, 2010. Simply put: Alstodt may not compete with Coty.

93. Through the production and sales of its “Confetti” and “10” brands of nail color, MBA is engaged in direct or indirect competition with Coty.

94. On or about March 16, 2010, Alstodt was the President of MBA.

95. By serving as the President of MBA, Alstodt is in continuing material breach of the Consulting agreement, as he is performing services for a direct or indirect competitor of Coty.

96. Alstodt materially breached the Consulting Agreement by creating, funding, owning, supporting, or otherwise performing services for MBA.

97. Alstodt materially breached the Consulting Agreement by failing to use his good faith efforts to perform his duties under the Consulting Agreement, as he was explicitly required to do under the Consulting Agreement.

98. Alstodt materially breached the Consulting Agreement by violating the covenant of good faith and fair dealing implicit in the Consulting Agreement.

99. As a result of Alstodt’s misconduct, Coty has been and will continue to be irreparably harmed, has no adequate remedy at law, and suffered monetary damages in an amount to be determined at trial.

COUNT II—AGAINST KOWALSKY
(Breach of the Kowalsky Noncompetition Agreement)

100. Coty repeats and realleges each of the foregoing allegations as though fully set forth herein.

101. The Kowalsky Noncompetition Agreement is a valid and enforceable contract.

102. Under the Kowalsky Noncompetition Agreement, for a period of twelve months, Kowalsky was prohibited from acting as a principal, agent, consultant, employee, officer, director, or otherwise, engage in any work or other activity which competes in any way with the Company (i) in or directly related to the specific areas or subject matters in which he worked during the term of his employment at Coty and/or any of its subsidiaries or predecessor entities, or (ii) involving or directly related to confidential information of which he became aware or to which he had access during such employment.

103. Upon information and belief, during the twelve months following the termination of his employment on September 30, 2009, Kowalsky has been and/or continues to be an agent, consultant, employee, officer, director, or otherwise has performed services for Alstodt, MBA, and/or is currently employed by HPAA, on matters directly related to the specific areas or subject matters in which he worked during the term of his employment at Coty and/or any of its subsidiaries or predecessor entities.

104. Through the production and sales of its “Confetti” and “10” brands of nail color, MBA is engaged in direct or indirect competition with Coty.

105. Kowalsky has materially breached the Kowalsky Noncompetition Agreement by directly or indirectly soliciting, inducing, influencing, or attempting to solicit, induce, or influence customers, suppliers, or vendor to change its business relationship with Coty

or otherwise interfere with any business or contractual relationship of Coty, including but not limited to Coty's business relationship with CVS, Rite Aid, and other businesses.

106. Kowalsky materially breached the Kowalsky Noncompetition Agreement by being employed by or performing services for a direct or indirect competitor of Coty, specifically Alstodt, MBA, and/or HPAA.

107. As a result of Kowalsky's misconduct, Coty has been and will continue to be irreparably harmed, has no adequate remedy at law, and suffered monetary damages in an amount to be determined at trial.

COUNT III—AGAINST KOWALSKY
(Breach of the Kowalsky Employment Agreement)

108. Coty repeats and realleges each of the foregoing allegations as though fully set forth herein.

109. The Kowalsky Employment Agreement is a valid and enforceable contract.

110. Under the Kowalsky Employment Agreement, Kowalsky agreed that for the twelve months following his termination, he would not "become associated as a principal, partner, employee, consultant or shareholder . . . that is actively engaged in any business that is competitive with those of the Company or any of its subsidiaries as in effect on the date of termination of employment."

111. By virtue of the conduct as alleged herein, Kowalsky materially breached the Kowalsky Employment Agreement by being employed by or performing services for a direct or indirect competitor of Coty, specifically Alstodt, MBA, and/or HPAA.

112. By virtue of the conduct as alleged herein, Kowalsky materially breached the Kowalsky Employment Agreement by engaging in work or other activity which competes in

any way with Coty in or directly related to the specific areas or subject matters in which he worked during his employment at Coty.

113. As a result of Kowalsky's misconduct, Coty has been and will continue to be irreparably harmed, has no adequate remedy at law, and suffered monetary damages in an amount to be determined at trial.

COUNT IV—ALSTODT, MBA, and HPAA
(Tortious Interference with Kowalsky's Noncompetition and Employment Agreements)

114. Coty repeats and realleges each of the foregoing allegations as though fully set forth herein.

115. Alstodt, MBA, and HPAA were aware that Kowalsky was under a duty not to compete with Coty.

116. Alstodt, MBA, and HPAA were aware that Kowalsky was subject to, *inter alia*, noncompetition covenants with Coty, which governed his conduct following employment with Coty.

117. By virtue of Alstodt's, MBA's, and HPAA's conduct described above, Alstodt, MBA, and HPAA interfered with and caused the breaches of the confidential information and noncompetition covenants in the agreements that Coty entered into with Kowalsky, and caused the breaches of the common law duties owed to Coty by Kowalsky, and have otherwise interfered with Coty's contractual and business relationships.

118. By virtue of their conduct, Alstodt, MBA, and HPAA knowingly, intentionally, and maliciously sought to harm Coty.

119. By virtue of their conduct, Alstodt, MBA, and HPAA used unlawful means to harm Coty.

120. Alstodt, MBA, and HPAA acted with intentional, malicious and/or wanton disregard of Coty's rights.

121. Upon information and belief, Alstodt, MBA, and HPAA profited and will continue to profit from the aforesaid tortious interference with the contractual and common law duties owed by Kowalsky to Coty.

122. As a result of Alstodt's, MBA's, and HPAA's conduct, Coty has been and will continue to be irreparably harmed, has no adequate remedy at law, and suffered monetary damages in an amount to be determined at trial.

COUNT V—ALL DEFENDANTS
(Unfair Competition)

123. Coty repeats and realleges each of the foregoing allegations as though fully set forth herein.

124. Coty used certain skills, made expenditures, expended labor to market its Sally Hansen brand products, and obtained retail space for these products in the relevant retail markets.

125. Defendants misappropriated the commercial advantage of Coty for their own benefit to sell their "Confetti" and "10" brands of nail color and to obtain retail space for these products in the relevant retail markets.

126. Coty compensated Alstodt and Kowalsky for their efforts in the continued maintenance and development of Coty's goodwill with resellers of Sally Hansen brand products. Coty, through its purchase of DLI, was entitled to any goodwill that Alstodt and Kowalsky had previously developed and maintained.

127. By virtue of the conduct as alleged herein, Defendants have intentionally, knowingly, and maliciously competed unfairly with Coty, including but not limited to their conduct in violating their noncompetition agreements.

128. As a result of Defendants' misconduct, Coty has been and will continue to be irreparably harmed, has no adequate remedy at law, and has suffered monetary damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Imposing preliminary and permanent injunctions enjoining Alstodt and Kowalsky from (i) breaching the terms of their respective noncompetition covenants with Coty; (ii) engaging in any employment arrangement with or performing services for MBA, HPAA, or any other entity or individual that would violate Coty's rights under the noncompetition agreements, including manufacturing, advertising, offering for sale, selling or distributing the MBA branded "Confetti" and "10" nail color products to any third party; and (iii) using the "Confetti" or "10" trademarks;

B. Awarding compensatory damages against Alstodt and Kowalsky for their breaches of their noncompetition agreements;

C. Awarding compensatory and punitive damages against Alstodt, MBA, and HPAA for their tortious interference with the Kowalsky Noncompetition and Employment Agreements;

D. Awarding compensatory and punitive damages against Defendants for their unfair competition against Plaintiff;

E. Ordering Alstodt, HPAA, Kowalsky, and MBA to disgorge all unlawfully obtained profits;

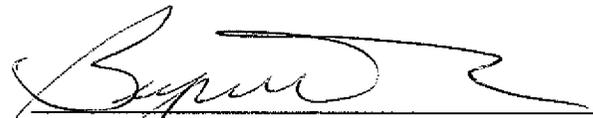
F. Ordering that Defendants deliver up to counsel or destroy all "Confetti" and "10" branded products in their possession, custody, or control; and

G. Awarding Coty such other and further relief as it deems just and proper.

DATED: New York, New York
August 11, 2010

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Attorneys for Plaintiff Coty Inc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

COTY INC.,

Plaintiff,

Index No.

v.

HARVEY P. ALSTODT; BRUCE C. KOWALSKY;
DIVERSIFIED BEAUTY PRODUCTS (f/k/a MBA
BEAUTY, INC.); and HARVEY P. ALSTODT
ASSOCIATES, INC.,

Defendants.

VERIFIED COMPLAINT

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