

2001

James Wagner and Jim Wagner, INC. v. Nuskin  
International orp., Dennis Clifton, David Clifton,  
Clofton Assoc., INC., lars Lynge, and Gorm  
International Corp : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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JAMES WAGNER and JIM WAGNER,	)	
INC.,	)	BRIEF OF APPELLANTS
	)	JAMES WAGNER AND
Appellants/Plaintiffs,	)	JIM WAGNER, INC.
	)	
vs.	)	Appeal No. 20010171-SC
	)	
NUSKIN INTERNATIONAL CORP.,	)	Trial Court No. 000400807
DENNIS CLIFTON, DAVID CLIFTON,	)	
CLIFTON ASSOC., INC., LARS LYNGE,	)	
And GORM INTERNATIONAL CORP.,	)	
	)	
Appellees/Defendants.	)	
	)	

---

APPEAL FROM ORDER GRANTING DEFENDANTS' MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION

---

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**FILED**

**OCT 03 2001**

**CLERK SUPREME COURT  
UTAH**

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## **LIST OF PARTIES TO PROCEEDINGS**

Following is a list of all parties:

### **Appellants/Plaintiffs**

James Wagner  
Jim Wagner, Inc.

### **Appellees/Defendants**

Dennis Clifton  
David Clifton  
Clifton Assoc., Inc.  
Lars Lynge  
Gorm International Corp.

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## **STATEMENT OF JURISDICTION**

Appellants/Plaintiffs James Wagner and Jim Wagner, Inc. appeal from the Order of Dismissal issued on January 23, 2001 by the Honorable Gary D. Stott as a final judgment or order in this matter. This Court has jurisdiction over this matter pursuant to Utah Code Annotated Section 78-2-2(3)(j) (1996).

Appellate jurisdiction exists under Section 78-2-2(3)(j) because the trial court's Order granting Appellees'/Defendants' Motion to Dismiss is a final judgment or order which adjudicates and determines all of the issues in the case. *See, Shurtz v. Thorley*, 90 Utah 381, 384, 61 P.2d 1262, 1264 (1936) ("a final judgment is a judgment that ends the controversy between the parties litigant"). The Order of Dismissal reserved no claims or issues for subsequent determination.

## **ISSUES PRESENTED FOR REVIEW**

The issue presented herein is whether the lower court erred in dismissing the case against defendants Dennis Clifton, David Clifton, Clifton Associates, Inc., Lars Lynge and Gorm International, for lack of personal jurisdiction where defendants were operating under Distributor Agreements with Nu Skin Corporation, whose policy and procedures mandate that all disputes, including disputes between distributors, shall be resolved in Utah and under the laws of Utah. The Court entered the Motion to Dismiss without a trial or an evidentiary hearing and without affording Appellants/Plaintiffs the opportunity to conduct discovery or cross examine witnesses. This issue is one of law and should be reviewed.



## **DETERMINATIVE RULES AND CENTRALLY IMPORTANT AUTHORITY**

The following rules and cases are determinative or of central importance with respect to the issues herein.

**A. Section 27 of the Nu Skin Policies and Procedures provides:**

The place or origin of the Contract, the place where the Company accepted the offer of a prospective Distributor to form the Contract, is the State of Utah. This Contract is to be construed, with respect to its validity and performance obligations thereunder, in accordance with the laws of the State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

**B. Section 30(b) of the Nu Skin Policies and Procedures provides, in part:**

In order to expedite the prompt resolution of any disputes which may arise under the Independent Distributor Agreement, Nu Skin International, Inc., has instituted a Mediation/Arbitration policy. This policy deals with the disposition of disputes arising out of the independent contractor relationship between Nu Skin International, Inc. and its independent contractors and/or disputes arising out of the relationship between Nu Skin International, Inc. independent contractors themselves.

**C. Gates Learjet Corp. v. B. Jensen, 743 F.2d 1325 (1984), cert. denied 471**

**U.S. 1066 (1985) controls where the court held that a distributorship agreement with a choice of forum clause was sufficient to exercise limited jurisdiction over the defendant.**

## **STATEMENT OF THE CASE**

### **I. NATURE OF CASE**

This appeal results from a dispute between several independent distributors of Nu Skin products. Appellants/Plaintiffs allege in their Complaint, among other things, that the various Appellees/Defendants, each of whom were Independent Distributors of Nu

Skin products, tortuously interfered with Plaintiff's economic relations by encouraging, enticing and otherwise assisting another distributor to sign up under a different sponsor. [R. at 1-23]. As a result of these activities, profits and commissions due to Plaintiffs were diverted to Defendants. The First Amended Complaint alternatively seeks an order to compel the Appellees/Defendants to participate in binding arbitration, according to the Nu Skin Policies and Procedures. [R. at 217-231].

The Motion to Dismiss was improperly granted where there is plainly a consent by all parties to the limited jurisdiction of the State of Utah regarding matters relating to the distributorship agreements herein.

## **II. COURSE OF PROCEEDINGS**

Appellants/Plaintiffs originally filed their Complaint on March 29, 2000. [R. at 26]. On May 12, 2000, Appellees/Defendants David Clifton, Dennis Clifton and Clifton Associates, Inc., filed a Motion to Dismiss for Lack of Personal Jurisdiction. [R. at 86]. On May 15, 2000, Appellee/Defendant Lars Lynge filed a separate Motion to Dismiss for Lack of Personal Jurisdiction. [R. at 105]. On May 18, 2000, Appellee/Defendant Gorm International, Inc. filed a third Motion to Dismiss for Lack of Personal Jurisdiction. [R. at 131]. On July 18, 2000, oral argument was heard before Judge Ray M. Harding, Jr. wherein he requested that Nu Skin submit an affidavit to the Court on the issue herein. [R. at 182].<sup>1</sup> On August 23, 2000, Nu Skin filed the affidavit of Richard M. Hartvifsen, Vice President of Regulatory Affairs, Nu Skin Enterprises. [R. at 241-245]. On August

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<sup>1</sup> Nu Skin Corporation was originally named as a defendant herein. Plaintiffs and Nu Skin have stipulated to litigate the issues between them by arbitration as mandated by Section 30 of the Nu Skin Policies and Procedures.

29, 2000, Judge Harding recused himself from this case. [R. at 247]. On November 2, 2000, Judge Gary Stott held oral argument for the attorneys to present the case. No testimony was taken at this hearing, only argument by counsel. Thereafter, Judge Stott dismissed the case “for the reasons set forth in Defendants’ respective supporting memoranda and during oral arguments.” [R. at 271-272]. No specific findings of fact were made in the Order of Dismissal. [R. at 271-272]. A copy of the Order is attached to the addendum hereto as Exhibit “A”.

### **III. DISPOSITION IN THE TRIAL COURT**

In holding that there was no personal jurisdiction over the Appellees/Defendants, the trial court simply ignored the plain language of the Distributorship Agreements, Nu Skin Policies and Procedures and the affidavit of Richard M. Hartvigsen. By the very terms of the Nu Skin Distributorship Agreements, each distributor “agrees to submit to the jurisdiction of the courts of the state of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.” [R. at 243]. The trial court had not legal basis or justification to ignore the plain language of the Distributorship Agreements and Nu Skin Policies and Procedures.

### **STATEMENT OF FACTS**

Plaintiffs and Defendants are each independent distributors of Nu Skin products.<sup>2</sup> [R. 1-23; 88; 90-91; 106-108]. Nu Skin Corporation is engaged in the distribution of

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Nu Skin, through counsel, nevertheless attended the hearing before Judge Harding, as well as the later hearing before Judge Stott.

<sup>2</sup> Defendant Dennis Clifton is the Vice President of Clifton Associates, Inc. [R. at 90-91]. Defendant David Clifton is the President of Clifton Associates, Inc. [R. at 88]. Defendant Lars Lynge was the principal partner of Gorm International. [R. at 106-108].

cosmetic materials through what is commonly known as “multi-level marketing”. [R. at 1-23]. The Nu Skin business is grounded in personal business relationships between distributors and their upline sponsors and downline distributors. [R. at 244]. The claims in the Complaint that have arisen between the parties deal exclusively with their respective relationships to Nu Skin International Corp., and the policies and procedures applicable to each of them. [R. at 1-23; 242-244].

Each Nu Skin Distributor is required to enter into a Distributorship Agreement. [R. at 244]. The Distributorship Agreements provide a contractually agreed upon forum and jurisdiction to resolve distributor disputes in a timely and effective manner. [R. at 244].

Prior to recusing himself, the Honorable Ray Harding, Jr., requested that Nu Skin Enterprises submit an affidavit in this matter relating its position relative to the jurisdictional issue raised by Appellees/Defendants. Nu Skin Enterprises submitted the affidavit of Richard Hartvigsen, Vice President of Regulatory Affairs. A copy of Mr. Hartvigsen’s affidavit is contained in the addendum hereto as Exhibit “B”.

Mr. Hartvigsen notes the following:

“That in order to become and remain a Nu Skin distributor, a distributor enters into a distributorship agreement with Nu Skin, which agreement includes: the distributor agreement, the Nu Skin Policies and Procedures, the Compensation Plan and the Mediation/Arbitration Policies.”

[R. at 244].

Section 27 of the Policies and Procedures agreement with Nu Skin provides:

The place or origin of the Contract, the place where the Company accepted the offer of a prospective Distributor to form the Contract, is the State of Utah. This Contract is to be construed, with respect to its validity and performance obligations thereunder, in accordance with the laws of the

State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

[R. at 243].

Section 30(b) of the Nu Skin Policies and Procedures provides, in part, the following:

In order to expedite the prompt resolution of any disputes which may arise under the Independent Distributor Agreement, Nu Skin International, Inc., has instituted a Mediation/Arbitration policy. This policy deals with the disposition of disputes arising out of the independent contractor relationship between Nu Skin International, Inc. and its independent contractors and/or disputes arising out of the relationship between Nu Skin International, Inc. independent contractors themselves.

[R. at 40]. A copy of Section 30 is contained in the addendum as Exhibit “C” attached hereto.

According to Mr. Hartvigsen, “Section 27’s consent to jurisdiction in the State Court of Utah was intended to apply to all disputes arising under or purporting to interpret the Contract whether or not such a dispute was between Nu Skin and a distributor or two or more distributors themselves.” [R. at 243]. Furthermore, “the disputes between distributors as to rights and benefits from downline distributors, such as in this case, arise out of the distributor’s contract rights and interpretations of their distributor agreements.” [R. at 243].

Mr. Hartvigsen provided the following justifications for this policy:

“That Nu Skin intended in Section 27’s consent to jurisdiction to include disputes between distributors as any determination as a result of any litigation or arbitration would likely involve some action on the part of Nu Skin to align distributors in accordance with the final decision and would

potentially impact the company's future contractual dealings with other distributors."

"That given the international nature of the business, it was Nu Skin's intent to provide an agreed upon forum for all distributor disputes including those between distributors from different countries."

"That by contractually agreeing to jurisdiction in the courts of Utah, all distributors are assured a forum for prompt resolution of all disputes with Nu Skin or other distributors."

[R. at 242].

Finally, Mr. Hartvigsen opined that "the dispute raised by plaintiff in this matter is the type of dispute intended to be covered by the consent to jurisdiction provisions in section 27 of the Policies and Procedures." [R. at 242].

In their Motion to Dismiss, Defendants simply argued that they did not "transact business" in the State of Utah. [R. at 94-102]. No mention was made in the moving papers with respect to the Distributorship Agreements.

### **SUMMARY OF ARGUMENTS**

The crux of Plaintiffs' position is simple: by soliciting the Distributorship Agreements and agreeing to be bound by the Nu Skin Policies and Procedures, each of the Defendants specifically consented to specific jurisdiction in the State of Utah pursuant to Utah Code Ann. Sec. 78-27-24 (1998). The trial court erred by ignoring the plain language of the Distributorship Agreements and Policies and Procedures governing the jurisdictional question raised herein.

## **ARGUMENT**

### **DEFENDANTS' CONSENTED TO SPECIFIC JURISDICTION IN THE STATE OF UTAH BY SIGNING THE DISTRIBUTORSHIP AGREEMENTS AND AGREEING TO BE BOUND BY NU SKIN'S POLICIES AND PROCEDURES**

Utah law recognizes two types of jurisdiction over non-residents: specific and general. A court may exercise specific jurisdiction if a non-resident defendant has purposefully directed his activities at residents in Utah and the litigation results from claims that arise out of, or relate to, those activities. *See*, Utah Code Ann. Section 78-27-24 (1998); Burger King Corp. v. Rudzewicz, 471 U.S. 472 (1985). The Court may exercise general jurisdiction where the non-resident's activities are "continuous and systematic." *See*, Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 416 (1984). However, the Court need not consider whether a defendant's activities rise to the level of "continuous and systematic" for purposes of due process considerations when a defendant consents to the jurisdiction of the forum state, as the defendants have in this case.

As distributors of Nu Skin products, Defendants explicitly agreed to be bound by Nu Skin's Policies and Procedures, as described by Nu Skin's Vice President of Regulatory Affairs, Richard M. Hartvigsen. Section 27 of the Policies and Procedures specifically states:

The place or origin of the Contract, the place where the Company accepted the offer of a prospective Distributor to form the Contract, is the State of Utah. This Contract is to be construed, with respect to its validity and performance obligations thereunder, in accordance with the laws of the State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

[R. at 243; Nu Skin Policy and Procedure, Section 27]. Section 30 plainly indicates that the procedures apply to disputes between distributors.

Mr. Hartvigsen explains in detail the purpose and importance of this procedure, which is essential to the adhesive operation of the Nu Skin distribution and compensation system. This procedure, when adhered to, is largely responsible for the success of the Nu Skin system. Future adherence to the procedure is necessary for the continued success of the Nu Skin system.

In the absence of an agreed upon forum to resolve all disputes between distributors and Nu Skin, and between the distributors themselves, the Nu Skin system itself would be threatened. By consolidating all litigation matters here in Utah, regardless of where they arise, Nu Skin is assured of consistently handling the contractual dealings between the distributors. As noted in Mr. Hartvigsen's affidavit, disputes between distributors invariably involve some action on the part of Nu Skin in aligning distributors with the final decision. By contractually agreeing to jurisdiction in the courts of Utah, all distributors are assured a forum for the prompt and consistent resolution of claims.

The present case is similar to Gates Learjet Corp. v. B. Jensen, 743 F.2d 1325 (1984), cert. denied 471 U.S. 1066, wherein the Ninth Circuit Court of Appeals held that by soliciting a distributorship agreement which contained a choice of forum clause subjected the defendant to limited jurisdiction.

In Gates Learjet Corp., an Arizona aircraft manufacturer filed suit against a non-resident defendant which related to a distributorship agreement which provided that it



was “an Arizona agreement and that it shall be governed by the laws of the State of Arizona . . . “ Id., at 1329. That agreement further stated that the “Courts of Arizona shall have exclusive jurisdiction to hear and determine all claims, disputes, actions or suits which may arise hereunder.” Id. In addressing the issue of whether there was “limited jurisdiction”,<sup>3</sup> the court noted the following factors:

- 1) The non-resident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privileges of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- 2) The claim must be on which arises out of or results from the defendant’s forum-related activities;
- 3) Exercise of jurisdiction must be reasonable.

Id. In analyzing the impact of the distributorship agreement on the jurisdictional issue, the Court noted that “Gates clearly satisfies the first prong of this test. Not only did Jensen solicit the distributorship agreement in Arizona, but also the agreement specifically provides that Arizona law governs it. The distributorship agreement, therefore, directly invokes the benefits and protections of Arizona law.” Id. at 1331. The Court concluded that “given these circumstances, Jensen should have reasonably anticipated “being haled into court” in Arizona.” Id.

In the present case, the Appellees/Defendants each solicited the distributorship agreement by voluntarily becoming independent distributors of Nu Skin and the Policies and Procedures mandate that Utah law applies and that the Utah courts will resolve all disputes between distributors. Given the plain language of the Policies and Procedures, Appellees/Defendants certainly could anticipate “being haled into court” in Utah. By

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<sup>3</sup> The Court noted that the activities were not sufficient to subject defendant to general jurisdiction.

executing the Distributorship Agreement and being bound by its terms, Appellees/Defendants purposefully availed themselves of the privileges of conducting business in Utah.

With respect to the second prong of the analysis, there is no debate that these claims arise out of the Distributorship Agreements. Finally, the exercise of jurisdiction is reasonable in light of the Distributorship Agreements and Nu Skin's Policies and Procedures.

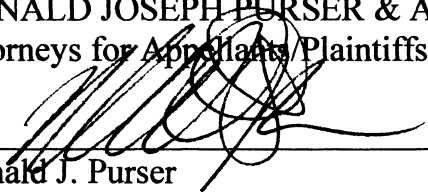
In summary, the ability of Nu Skin International, Inc. to effectively manage and implement its unique compensation system depends in large part upon the jurisdictional and choice of forum provisions in its Policies and Procedures. As explained by Mr. Hartvigsen, "That in order to ensure the orderly continuation of business relationships and the multi-level marketing business in an international company where distributors might have direct business relationships with distributors from one or more countries, it was essential to have a contractually agreed upon forum and jurisdiction to resolve distributor disputes in a timely and effective manner." [R. at 244].

### **CONCLUSION**

For the reasons stated herein, Appellants/Plaintiffs respectfully request that this Court reverse the decision of the District Court dismissing the case for lack of personal jurisdiction and remand the case to the District Court for further proceedings.

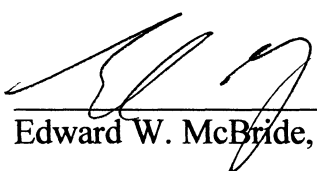
Dated: October 2, 2001

DONALD JOSEPH PURSER & ASSOCIATES, P.C.  
Attorneys for Appellants/Plaintiffs



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Donald J. Purser



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Edward W. McBride, Jr.

**Certificate of Service**

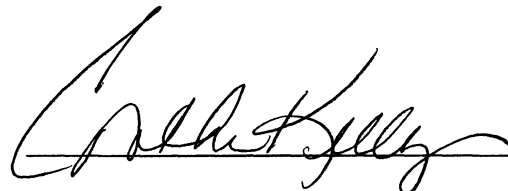
I hereby certify that on the 2<sup>ND</sup> day of October, 2001, I caused a true and correct copy of the within and foregoing BRIEF OF APPELLANTS/PLAINTIFFS JAMES WAGNER AND JIM WAGNER, INC., to be mailed, overnight mail, postage prepaid, to the following:

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Mark Hindley  
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Denver, CO 80290

Richard Mitchell  
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5445 DTC Parkway  
Englewood, CO 80111-3053

A handwritten signature in black ink, appearing to read "Robert Kelly", written over a horizontal line.

## **ADDENDUM**

The following is a list of items attached hereto as addendum:

- A. Order of Dismissal.
- B. Affidavit of Richard M. Hartvigsen.
- C. Nu Skin Policies and Procedures.

## Exhibit A

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Attorneys for Defendant Lars Lyng

---

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

---

JAMES WAGNER and JIM WAGNER,	)	
INC.,	)	ORDER
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NUSKIN INTERNATIONAL CORP.,	)	Civil No. 000400807
DENNIS CLIFTON, DAVID CLIFTON,	)	
CLIFTON ASSOC., INC., LARS	)	Division #4 7
LYNGE and GORM INTERNATIONAL	)	
CORP.,	)	
	)	
Defendants.	)	
	)	

---

On Wednesday, November 29, 2000, the Court presided over a hearing on the respective motions to dismiss for lack of personal jurisdiction filed by Defendant Lars Lyng, Defendant Gorm International, and Defendants Dennis Clifton, David Clifton and Clifton Associates, Inc. Plaintiffs were represented by Edward T. McBride, Esq.; Defendants Lars Lyng and Gorm International were represented by Jon V. Harper, Esq.; and Defendants

Dennis Clifton, David Clifton and Clifton Associates, Inc., were represented by Richard W. Mitchell, Esq.

After considering the moving and opposing papers and the arguments of counsel, and good cause appearing therefor, it is hereby

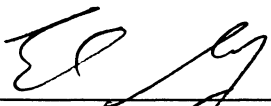
**ORDERED, ADJUDGED AND DECREED** that Defendants' motions to dismiss for lack of personal jurisdiction are *granted*, for the reasons set forth in Defendants' respective supporting memoranda and during oral argument.

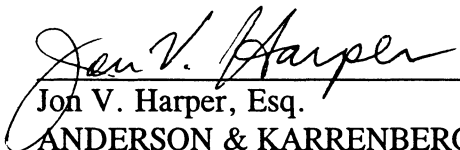
DATED: \_\_\_\_\_

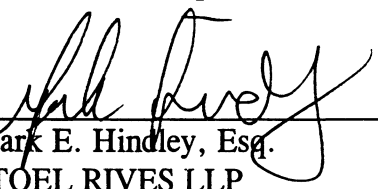
BY THE COURT:

\_\_\_\_\_  
The Honorable Gary D. Stott  
Fourth Judicial District Court Judge

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Edward W. McBride, Esq.  
DONALD J. PURSER & ASSOC., P.C.  
Attorneys for Plaintiff

  
\_\_\_\_\_  
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Mark E. Hindley, Esq.  
STOEL RIVES LLP  
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Clifton and Clifton Associates, Inc.



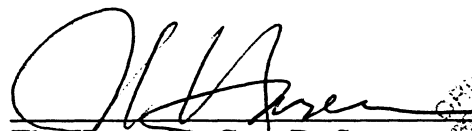
Dennis Clifton, David Clifton and Clifton Associates, Inc., were represented by Richard W. Mitchell, Esq.

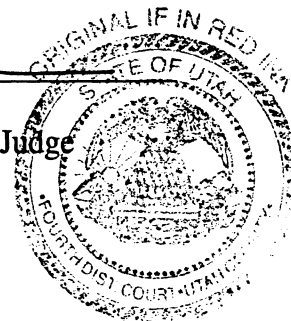
After considering the moving and opposing papers and the arguments of counsel, and good cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED** that Defendants' motions to dismiss for lack of personal jurisdiction are *granted*, for the reasons set forth in Defendants' respective supporting memoranda and during oral argument.

DATED: Jan 23 2001


BY THE COURT:

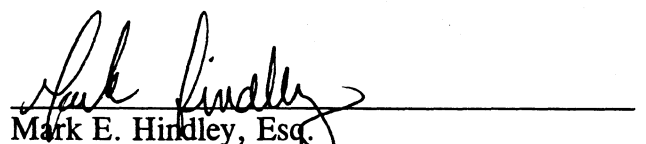
  
The Honorable Gary D. Stott  
Fourth Judicial District Court Judge



APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Edward W. McBride, Esq.  
DONALD J. PURSER & ASSOC., P.C.  
Attorneys for Plaintiff

  
Jon V. Harper, Esq.  
ANDERSON & KARRENBURG  
Attorneys for Defendants Lars Lynge and Gorm  
International Corp.

  
Mark E. Hindley, Esq.  
STOEL RIVES LLP  
Attorneys for Defendants David Clifton, Dennis  
Clifton and Clifton Associates, Inc.

### CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I am a member of and/or employed by the law firm of Anderson & Karrenberg, 50 West Broadway, Suite 700, Salt Lake City, Utah 84101, and that on the 26th day of December, 2000, I caused a true and correct copy of the foregoing **[Proposed] Order** to be served, via U.S. Mail, postage prepaid, upon:

Donald J. Purser  
Edward W. McBride  
**Donald Joseph Purser & Associates, P.C.**  
2735 East Parleys Way, Suite 303  
Salt Lake City, Utah 84109  
**Attorneys for Plaintiffs James Wagner  
and Jim Wagner, Inc.**

Mark E. Hindley  
**Stoel Rives LLP**  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111

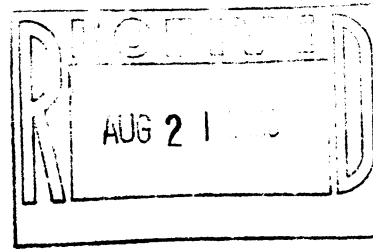
- and -

Richard W. Mitchell  
**Norton Lidstone, P.C.**  
The Quadrant, Suite 850  
5445 DTC Parkway  
Englewood, Colorado 80111  
**Attorneys for Defendants Dennis Clifton,  
David Clifton and Clifton Associates, Inc.**

A handwritten signature in cursive script, appearing to read "Michelle R. Amundson", written in black ink.

## Exhibit B

CALLISTER NEBEKER & MCCULLOUGH  
MARTIN R. DENNEY (4559)  
Gateway Tower East Suite 900  
10 East South Temple  
Salt Lake City, UT 84133  
Telephone: (801) 530-7300  
Facsimile: (801) 364-9127



Attorneys for Defendant Nu Skin International, Inc. Corporation

IN THE FOURTH JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JAMES WAGNER and JIM WAGNER,  
INC.,

Plaintiffs,

vs.

NU SKIN INTERNATIONAL  
CORPORATION, DENNIS CLIFTON,  
DAVID CLIFTON, CLIFTON  
ASSOCIATES, INC., LARS LYNGE, and  
GORM INTERNATIONAL  
CORPORATION,

Defendants.

AFFIDAVIT OF RICHARD M.  
HARTVIGSEN ON BEHALF  
OF NU SKIN ENTERPRISES, INC.

Civil No. 000400807

Judge: Ray M. Harding, Jr.

STATE OF UTAH            )  
                                  ) ss.  
COUNTY OF UTAH        )

Affiant, Richard M. Hartvigsen, under oath states as follows:

1. That affiant is currently the Vice President of Regulatory Affairs for Nu Skin Enterprises, Inc. and is over twenty-one years of age.

2. That at the time of the drafting of the policies and procedures and mediation/arbitration policies at issue in the above matter, affiant was Director of Legal Affairs and was instrumental in the drafting and adoption of the above mentioned documents.

3. That Nu Skin is a multi-level marketing company whose business is grounded in personal business relationships between distributors and their upline sponsors and downline distributors.

4. That in order to ensure the orderly continuation of business relationships and the multi-level marketing business in an international company where distributors might have direct business relationships with distributors from one ore more countries, it was essential to have a contractually agreed upon forum and jurisdiction to resolve distributor disputes in a timely and effective manner.

5. That in order to become and remain a Nu Skin distributor, a distributor enters into a distributorship agreement with Nu Skin, which agreement includes; the distributor agreement, the Nu Skin Polies and Procedures, the Compensation Plan and the Mediation/Arbitration Policies. (*See* copy of Distributor Agreement attached hereto as Exhibit "A")

6. That Section 27 of the Policies and Procedures agreement with Nu Skin provides:

The place of origin of this Contract, the place where the Company accepted the offer of a prospective Distributor to form the Contract, is the State of Utah.

This Contract is to be construed, with respect to its validity and performance obligations thereunder, in accordance with the laws of the State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

7. That Section 30 of the Policies and Procedures provides for a mandatory Mediation/Arbitration dispute resolution. (*See* Policies and Procedures attached hereto as Exhibit "B")

8. That the Mediation/Arbitration Policies provide that both the mediation and the arbitration will take place in Salt Lake City, Utah.

9. That Section 27's consent to jurisdiction in the State Courts of Utah was intended to apply to all disputes arising under or purporting to interpret the Contract whether or not such a dispute was between Nu Skin and a distributor or two or more distributors themselves.

10. That disputes between distributors as to rights and benefits from downline distributors, such as in this case, arise out of the distributor's contractual rights and interpretations of their distributor agreement.

11. That Nu Skin intended in Section 27's consent to jurisdiction to include disputes between distributors as any determination as a result of any litigation or arbitration would likely

involve some action on the part of Nu Skin to align distributors in accordance with the final decision and would potentially impact the company's future contractual dealings with other distributors.

12. That given the international nature of the business, it was Nu Skin's intent to provide an agreed upon forum for all distributor disputes including those between distributors from different countries

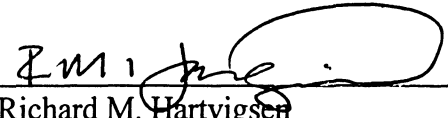
13. That by contractually agreeing to jurisdiction in the courts of Utah, all distributors are assured a forum for prompt resolution of all disputes with Nu Skin or other distributors.

14. That the dispute raised by plaintiff in this matter is the type of dispute intended to be covered by the consent to jurisdiction provisions in Section 27 of the Policies and Procedures.

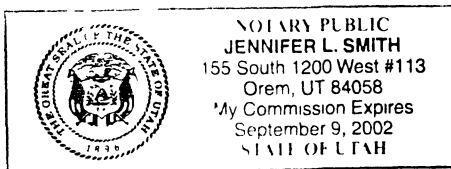
15. That the above is according to affiant's best information and belief and further  
affiant sayeth not.

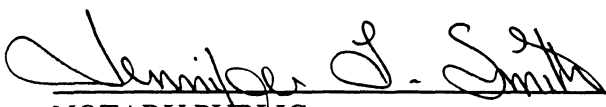
DATED this 16 day of August, 2000.

NU SKIN ENTERPRISES, INC.

  
Richard M. Hartvigsen  
Vice President of Regulatory Affairs  
Nu Skin Enterprises, Inc.

Subscribed, sworn to and acknowledged before me by Richard M. Hartvigsen, whose  
identity is known to me or proven to me on the basis of satisfactory evidence, this 16<sup>th</sup> day of  
August, 2000.



  
NOTARY PUBLIC  
Residing At: Orem, Utah  
My Commission Expires: 9/9/02



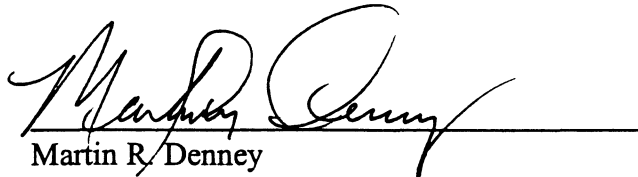
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of AFFIDAVIT OF RICHARD H. HARTVIGSEN ON BEHALF OF NU SKIN ENTERPRISES, INC. was served by United States mail, first class postage prepaid, on the 17<sup>th</sup> day of August 2000, on the following:

Donald J. Purser  
Edward W. McBride  
Donald Joseph Purser & Associates  
2735 East Parleys Way, Suite 303  
Salt Lake City, Utah 84109

David J. Jordan  
Mark E. Hindley  
Stoel, Rives  
One Utah Center, Suite 1100  
201 South Main Street  
Salt Lake City, Utah 84111

John V. Harper  
Anderson & Karrenberg  
700 Bank One Tower  
50 West Broadway  
Salt Lake City, Utah 84101

  
Martin R. Denney

## Exhibit C

its validity and performance obligations thereunder, in accordance with the laws of the State of Utah applicable to contracts made and to be wholly performed within such State. A Distributor agrees to submit to the jurisdiction of the courts of the State of Utah for resolution of any conflict or litigation arising under or purporting to interpret the Contract.

## Section 28 Notices

Any notice or other communications requested or permitted to be given under the Contract shall be in writing and shall be delivered personally, transmitted by facsimile or sent by first class, certified (or registered) or express mail, postage prepaid, and, unless otherwise provided in the Contract, shall be deemed given when delivered personally, or if transmitted by facsimile, one day after the date of such facsimile, or if mailed, 5 days after the date of mailing, to the address of the Company's headquarters or to the Distributor's address as provided on the Distributor Agreement, unless notice of a change thereof has been received. The Company shall have the right, as an alternative method of notice under this Section 24, to use mailers or other normal channels of communications with Distributors.

## Section 29 and Assigns

The Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

## Section 30 n and Claims

A. In order to protect the Company, its assets, and its reputation from claims or disputes created by outside (non-Distributor) third parties, Nu Skin International, Inc. requires the following: if any Distributor is charged with any infringement of any proprietary right of any outside third party (who is not a Distributor) arising from, any of the Company's proprietary assets, or if the Distributor becomes the subject of any claim or suit related to such Distributor's conduct-related business or any other action that directly or indirectly negatively affects or puts at risk the Company, its reputation, or any of its tangible or intangible assets of whatever nature, such Distributor shall immediately notify the Company, and the Company may, at its own expense and upon reasonable notice, take whatever action it deems necessary (including, but not limited to, controlling any litigation or settlement discussion related thereto) to protect itself, its reputation, and its tangible and intangible property. Such Distributor shall take no action related to any such claim and suit, unless the Company consents, which consent shall not unreasonably be withheld.

B. In order to expedite the prompt resolution of any disputes which may arise under the Independent Distributor Agreement, Nu Skin International, Inc. has instituted a Mediation/Arbitration policy. This policy deals with the disposition of disputes arising out of the independent contractor relationship between Nu Skin International, Inc. and its independent contractors and/or disputes arising out of the relationship between Nu Skin International, Inc. independent contractors themselves. Distributor complaints are first handled by the Distributor Conduct Review Committee as described by Section 6 of the Policies and Procedures. The new Mediation/Arbitration policy will also apply in the event a Distributor disagrees with any disciplinary action or interpretation of the Contract by the Company. The new Mediation/Arbitration policy is mandatory for resolving Distributor disputes as of April 1, 1994. The complete Mediation/Arbitration policy is available upon request from the Legal Department to parties who are involved in a controversy as defined above.

## Section 31 Headings

The headings in the Contract are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions of the Contract.

## Section 32 tional Business

A Prior to the official opening of an Authorized Country, permissible Distributor activity in an unopened country is limited to providing business cards and conducting, organizing or participating in meetings where the number of attendees at any given meeting, including the Distributor, does not exceed five. Distributor premarketing conduct that is prohibited in all countries includes but is not limited to:

- 1) importing or facilitating the importation of, selling, gifting, or distributing in any manner, Company products or product samples;