

2007

Innerlight, Inc. v. The Matrix Group, LLC : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Innerlight, Inc v. The Matrix Group*, No. 20070425.00 (Utah Supreme Court, 2007).
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IN THE UTAH SUPREME COURT

INNERLIGHT, INC.,

Plaintiff/Appellee,

vs.

THE MATRIX GROUP, LLC,

Defendant/Appellant.

Case No. 20070425-SC

REPLY BRIEF OF APPELLANT

Appeal from the Fourth Judicial District Court, Utah County, State of Utah
The Honorable Fred D. Howard

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FILED
UTAH APPELLATE COURTS
MAY 07 2008

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TABLE OF CONTENTS

<u>TABLE OF AUTHORITIES</u>	vi
--	----

<u>ARGUMENT</u>	1
------------------------------	---

<u>I. MATRIX DID NOT WAIVE ANY ARGUMENTS BY CHOOSING NOT TO RAISE THEM IN ITS OPENING BRIEF</u>	1
--	---

<u>A. On Summary Judgment, A Trial Court Does Not Find Facts Or Resolve Factual Disputes</u>	1
---	---

<u>B. Innerlight's Standard Is Tantamount To A Marshaling Requirement That Is Neither Necessary Nor Required</u>	2
---	---

<u>C. When The Trial Court Granted Summary Judgment For Innerlight, The Court Vindicated Innerlight's Sole Cause Of Action</u>	3
---	---

<u>D. Innerlight's Cases Do Not Support Its Conclusion</u>	3
---	---

<u>1. Am. Towers v. CCI Mech., Inc., 930 P.2d 1182 (Utah 1996)</u>	4
---	---

<u>2. Coroles v. Sabey, 2003 UT App 339, 79 P.3d 974 (Utah Ct. App. 2003)</u>	4
--	---

<u>3. Pasquin v. Pasquin, 1999 UT App 245, 988 P.2d 1 (Utah Ct. App. 1999)</u>	5
---	---

<u>4. Eddy v. Albertson's, Inc., 2001 UT 88, 34 P.3d 781 (Utah 2001), and Coleman v. Stevens, 2000 UT 98, 17 P.3d 1122 (Utah 2000)</u>	6
---	---

<u>II. INNERLIGHT FULFILLED THE CONDITION PRECEDENT</u>	6
--	---

<u>III. INNERLIGHT'S UCC ARGUMENTS DO NOT PRECLUDE THE ENFORCEMENT OF THE CONTRACT'S FORUM SELECTION CLAUSE</u>	9
--	---

<u>A. The General Application Of The Uniform Commercial Code</u>	10
---	----

<u>B. UCC Section 2-204(1): Conduct By Both Parties That Recognizes The Existence Of A Contract Is Sufficient To</u>	
---	--

<u>Show Agreement</u>	10
<u>C. UCC Section 2-305(4): The Parties Fixed The Products’ Prices</u>	11
<u>D. UCC Section 2-202(1): Innerlight’s Purchase Orders Are Not “Evidence Of Any Prior Agreement Or Of A Contemporaneous Oral Agreement.”</u>	12
1. Section 2-202(1) allows the parties’ “course of performance” to supplement and explain the terms of the Contract	14
2. Section 2-202(2) allows the Court to consider Innerlight’s purchase orders as “consistent additional terms” with the Contract	15
<u>E. UCC Section 2-208(3): The Parties’ “Course of Performance” Can Show Waiver Or Modification Of Any Term In The Contract, Including Section 2(b) And The Anti-waiver Clause</u>	17
<u>F. UCC Section 2-209(5): Innerlight Failed To Timely Rescind Its Waiver</u>	19
<u>IV. THE TRIAL COURT INCORRECTLY RULED ON THE PARTIES’ MOTIONS TO STRIKE EACH OTHER’S AFFIDAVITS</u>	21
<u>A. Tate’s Affidavit Contains Inadmissible Hearsay, So The Trial Court Should Have Stricken The Offending Paragraph</u>	21
<u>B. The Trial Court Erred In Striking Catinella’s Third Affidavit</u>	22
1. Matrix opposed Innerlight’s Motion to Strike	22
2. Matrix timely filed Catinella’s third affidavit in conjunction with Matrix’s reply memorandum in support of summary judgment	23
3. Catinella’s third affidavit complies with Rule 56(e), is based on personal knowledge, and contains no hearsay	24

**V. PURSUANT TO RULE 24(a)(9), MATRIX REQUESTS
ATTORNEYS' FEES AND COSTS ON APPEAL BASED ON
SECTION 12 OF THE CONTRACT**

25

CONCLUSION 25

ADDENDUM A

Exclusive Distributorship Agreement (“Contract”) between Innerlight and Matrix.

ADDENDUM B

Innerlight’s six purchase orders to Matrix.

ADDENDUM C

Advertisements and screenshots from Innerlight’s website touting the Beverly Sassoon skin care products.

ADDENDUM D

Copies of checks from Innerlight to Matrix for payment of products pursuant to the Contract.

ADDENDUM E

Travel reservations for Beverly Sassoon to appear in Las Vegas and Newark, New Jersey to promote Innerlight’s Beverly Sassoon skin care products. Invoice from Matrix to Innerlight requesting payment for Sassoon’s appearance in Las Vegas, “per contract.” Innerlight’s check to Matrix for full payment of Sassoon’s travel expenses and appearance fee.

ADDENDUM F

Invoice from Matrix to Innerlight requesting payment for Sassoon’s appearance in Newark, New Jersey, “per contract.”

ADDENDUM G

Press releases and other corporate information from Innerlight’s parent company, The Quigley Corporation, announcing Innerlight’s exclusive distributorship agreement.

ADDENDUM H

Form 10Q from The Quigley Corporation.

ADDENDUM I

Judge Howard's April 16, 2007 Order granting Innerlight's motion to strike Catinella's third affidavit and denying Matrix's motion to strike Tate's affidavit.

ADDENDUM J

Judge Howard's November 28, 2006 Notice of Oral Argument.

TABLE OF AUTHORITIES

UTAH CASES

<i>Am. Towers v. CCI Mech., Inc.</i> , 930 P.2d 1182 (Utah 1996)	4
<i>Bullough v. Sims</i> , 400 P.2d 20 (Utah 1965)	14
<i>Calhoun v. Universal Credit Co.</i> , 146 P.2d 284 (Utah 1944)	18
<i>Coleman v. Stevens</i> , 2000 UT 98, 17 P.3d 1122 (Utah 2000)	6
<i>Coroles v. Sabey</i> , 2003 UT App 339, 79 P.3d 974 (Utah Ct. App. 2003)	4-5
<i>Eddy v. Albertson's, Inc.</i> , 2001 UT 88, 34 P.3d 781 (Utah 2001)	6
<i>Ellsworth v. Am. Arbitration Ass'n</i> , 2006 UT 77, 148 P.3d 983 (Utah 2006)	1
<i>Living Scriptures, Inc. v. Kudlik</i> , 890 P.2d 7 (Utah Ct. App. 1995)	18
<i>Pasquin v. Pasquin</i> , 1999 UT App 245, 988 P.2d 1 (Utah Ct. App. 1999)	5-6
<i>Poteet v. White</i> , 2006 UT 63, 147 P.3d 439 (Utah 2006)	1, 2
<i>Power Sys. & Controls, Inc. v. Keith's Elec. Constr. Co.</i> , 765 P.2d 5 (Utah Ct. App. 1988)	10
<i>Ron Shepherd Ins. v. Shields</i> , 882 P.2d 650 (Utah 1994)	1
<i>Smith v. Four Corners Mental Health Ctr., Inc.</i> , 2003 UT 23, 70 P.3d 904 (Utah 2003)	2
<i>Soter's, Inc. v. Deseret Fed. Sav. & Loan Ass'n</i> , 857 P.2d 935 (Utah 1993)	17
<i>State v. Pena</i> , 869 P.2d 932 (Utah 1994)	18-19
<i>Stewart v. Utah Pub. Serv. Comm'n</i> , 885 P.2d 759 (Utah 1994)	25
<i>Sunridge Dev. Corp. v. RB&G Eng'g, Inc.</i> , 2008 UT App 29, 177 P.3d 644 (Utah Ct. App. 2008)	23-24

<i>Wycalis v. Guardian Title</i> , 780 P.2d 821 (Utah Ct. App. 1989)	1
--	---

OTHER AUTHORITIES

1 White and Summers, <i>Uniform Commercial Code</i> , 4th Ed. §§ 1-6	18-19
4 <i>Am. Jur. 2d</i> Appellate Review § 99 (2008).....	2

ARGUMENT

I. MATRIX DID NOT WAIVE ANY ARGUMENTS BY CHOOSING NOT TO RAISE THEM IN ITS OPENING BRIEF.

Innerlight's brief reads as though there had been a bench trial below. But on appeal from summary judgment, the reviewing court gives no deference to the trial court's legal conclusions or factual findings. The standard of review is de novo; this Court reviews the case anew.

A. On Summary Judgment, A Trial Court Does Not Find Facts Or Resolve Factual Disputes.

On appeal from summary judgment, this Court gives no weight or credence to the trial court's factual findings, since, "by definition, a district court does not resolve issues of fact at summary judgment" *Poteet v. White*, 2006 UT 63, ¶ 7, 147 P.3d 439, 441 (Utah 2006); *see also Ellsworth v. Am. Arbitration Ass'n*, 2006 UT 77, ¶ 19 n.10, 148 P.3d 983, 989 n.10 (Utah 2006) (refusing to give deference to the trial court's findings of fact on appeal from a summary judgment ruling, then reiterating that on summary judgment, a trial court errs in finding facts because a trial court "should not resolve factual disputes").

Further, a reviewing appellate court affords "no . . . deference to the trial court's legal conclusions" *Wycalis v. Guardian Title*, 780 P.2d 821, 824 (Utah Ct. App. 1989); *see also Ron Shepherd Ins. v. Shields*, 882 P.2d 650, 654 (Utah 1994) ("[W]e do not defer to the trial court's rulings. . . . We determine only whether the trial court erred in applying the governing law and whether the trial court correctly held that there were not disputed issues of material fact.") (quotations and citation omitted).

Therefore, since this Court reviews the trial court's decision "de novo, reciting all facts and fair inferences drawn from the record in the light most favorable to the nonmoving party," the reasoning and rationale behind the trial court's decision is irrelevant.¹ *Poteet*, 2006 UT 63, ¶7, 147 P.3d at 441; *see also* 4 *Am. Jur. 2d* Appellate Review § 99 (2008) ("An appeal cannot be taken from an instrument containing only the reasons for judgment, but must be taken from the judgment itself."). Matrix had no obligation to counter each basis for the trial court's decision to preserve any argument on appeal.

B. Innerlight's Standard Is Tantamount To A Marshaling Requirement That Is Neither Necessary Nor Required.

This Court expressly rejected a marshaling requirement for appellants when appealing from summary judgment: "[w]hen appealing a district court's grant of summary judgment . . . the appellant has no obligation to marshal the evidence." *Smith v. Four Corners Mental Health Ctr., Inc.*, 2003 UT 23, ¶ 16 n.6, 70 P.3d 904, 910 n.6 (Utah 2003). Rather, "[t]he marshaling obligation only arises after a party challenges the sufficiency of the evidence to support a jury's verdict or a district court's ruling containing specific findings of fact." *Id.* And since, at the "summary judgment stage, the district court is not concerned about the sufficiency of any evidence" or findings of fact, the appellant need not marshal. *Id.*

¹ Innerlight submitted a twenty-one page order, reciting findings of facts and conclusions of law. (R. at 857-77.) Matrix objected to the proposed order, arguing that "[s]ince the [trial court] disposed of [the] case on summary judgment, the appellate court [would] review[] the case de novo." (R. at 804-05.) The trial court overruled the objection and signed and entered Innerlight's proposed order.

Innerlight's marshaling requirement is not necessary or required when appealing from a trial court's grant of summary judgment. Therefore, Matrix did not waive any arguments on appeal by electing not to address them in its opening brief.

C. When The Trial Court Granted Summary Judgment For Innerlight, The Court Vindicated Innerlight's Sole Cause Of Action.

Innerlight began and ended this case with a thirteen-paragraph complaint and a single cause of action. It sought a declaratory judgment that "the parties have not entered into a valid contract" (R. at 16.) Innerlight then moved for summary judgment on that single cause of action. (R. at 134-217.) When the trial court granted summary judgment, it adjudicated Innerlight's single cause of action, declaring that no contract existed between Innerlight and Matrix. (R. at 857.)

Each and every argument and theory that Innerlight proposed was not a separate claim or cause of action that Matrix had to address in its opening brief.² On appeal, this Court reviews the record as a whole, giving no deference to the trial court or its factual or legal conclusions. The only issues are whether there is a disputed issue of material fact and whether the movant is entitled to judgment as a matter of law.

Therefore, since the trial court granted summary judgment as to Innerlight's sole cause of action, Matrix did not have to address, in its opening brief, every justification for the trial court's decision to preserve Matrix's ability to counter those arguments on appeal once Innerlight raised them.

D. Innerlight's Cases Do Not Support Its Conclusion.

² Innerlight did not cite a single case for this proposition.

Innerlight's five cited cases do not support its argument that on appeal, Matrix was obligated, in its opening brief, to address and counter each basis for the trial court's decision.

1. *Am. Towers v. CCI Mech., Inc.*, 930 P.2d 1182 (Utah 1996).

First, Innerlight cited *Am. Towers v. CCI Mech., Inc.* for the proposition that “[i]ssues not briefed by an appellant are deemed waived and abandoned.” 930 P.2d 1182, 1185 n.5 (Utah 1996). (Appellee's Br. 13.) In *American Towers*, the trial court dismissed some claims against the defendants because they were shareholders of entities that developed the real estate project at issue, and the court held the corporate veil could not be pierced. *Id.* at 1185. The appellant did not address or appeal the dismissal of these defendants, so this Court, in an attempt at clarity, dropped a footnote and held that since the appellant did not appeal or address the dismissal of these specific defendants, the issue was waived. *Id.* at 1185 n.5. This does not support Innerlight's argument that, after a trial court grants summary judgment, the appellant must counter, in its opening brief, each and every argument relied upon by the court.

2. *Coroles v. Sabey*, 2003 UT App 339, 79 P.3d 974 (Utah Ct. App. 2003).

Innerlight cited *Coroles v. Sabey* for the proposition that an appellant must meet “minimum standards . . . to challenge a trial court's ruling and avoid abandoning any claim of error.” 2003 UT App 339, 79 P.3d 974 (Utah Ct. App. 2003). (Appellee's Br. 13.) *Coroles* is factually distinguishable. In *Coroles*, the plaintiffs/appellants brought thirteen causes of action, and the trial court dismissed the entire complaint. *Id.* at ¶¶ 6, 9,

979. The plaintiff/appellant presumed to appeal the trial court's ruling with respect to each of the thirteen individual causes of action. *Id.* In its opening brief, the appellant titled section I of the brief "THE TRIAL COURT ERRED IN DISMISSING THE ENTIRE COMPLAINT." *Id.* In spite of this broad language, the appellant provided no analysis in the brief of five of the thirteen causes of action that were supposedly appealed. *Id.* On appeal, this Court held that the appellant's global reference alone did not constitute the analysis required to brief the five causes of action that the appellant all but ignored. *Id.*

Contrary to *Coroles*, Matrix is not briefing only one of Innerlight's several causes of action. Rather, *Innerlight had only one cause of action*—a declaratory judgment that the parties did not execute the Exclusive Distributor Agreement ("Contract"). Innerlight moved for summary judgment on that single cause of action, and the trial court granted the motion. Matrix then appealed that ruling on Innerlight's single cause of action.

3. *Pasquin v. Pasquin*, 1999 UT App 245, 988 P.2d 1 (Utah Ct. App. 1999).

Innerlight cited *Pasquin v. Pasquin* for the argument that an appellant "has waived any challenge to this ruling by failing to raise, brief, or argue the issue." 1999 UT App 245, ¶ 21, 988 P.2d 1, 6 (Utah Ct. App. 1999). (Appellee's Br. 13.) In *Pasquin*, the court issued an odd, separate "additional" ruling that the plaintiff could not recover under a specific cause of action. *Id.* The plaintiff did not appeal that issue, nor did she "raise, brief, or argue" it. *Id.* Therefore, the court of appeals declined to address it.

In the instant case, Matrix followed the letter of the law and raised the only issue it

could—the trial court’s ruling on summary judgment which vindicated Innerlight’s sole cause of action. And Innerlight can point to no case, rule, or statute that supports the marshaling that Innerlight argues for.

4. *Eddy v. Albertson’s, Inc.*, 2001 UT 88, 34 P.3d 781 (Utah 2001), and *Coleman v. Stevens*, 2000 UT 98, 17 P.3d 1122 (Utah 2000).

Innerlight cited *Eddy v. Albertson’s, Inc.* and *Coleman v. Stevens* for the proposition that an appellate court “will not consider matters raised for the first time in the reply brief.” *Eddy*, 2000 UT 98, ¶ 21, 34 P.3d at 785 (citation and quotations omitted). (Appellee’s Br. 15.) In *Eddy*, the plaintiff requested attorneys’ fees—for the first time in the entire case—in his appellate reply brief. *Id.* Clearly, since the trial court did not have an opportunity to address that issue below, the plaintiff had not preserved the issue for appeal, and the appellate court could not pass on the issue. Similarly, in *Coleman*, the appellant tried to raise issues for the first time on appeal that he did not raise in the trial court. *Coleman*, 2000 UT 98, ¶ 9, 17 P.3d at 1124.

Eddy and *Coleman* present different factual scenarios than the instant case. Both in the trial court and on appeal, Matrix opposed and contested the trial court’s grant of Innerlight’s summary judgment and denial of Matrix’s summary judgment. (R. at 907-09.) Therefore, *Eddy* and *Coleman* are distinguishable and do not apply.

II. INNERLIGHT FULFILLED THE CONDITION PRECEDENT.

The Contract, executed by the parties, in Section 2(b), did call for Innerlight—not Matrix—to take the affirmative step of accepting, in writing, the prices of the products it

would purchase from Matrix.³ (R. at 455.) Section 2(b) did *not* require Innerlight's written acceptance to take a certain form or to include specific, "magic" language.

Innerlight complied with the condition precedent when it sent six individual, official purchase orders to Matrix—each purchase order containing the "per unit" price of each item ordered—totaling more than \$250,000 worth of Beverly Sassoon skin care products. (R. at 462-67.) (Copies of these six purchase orders are attached hereto as Addendum B.) Innerlight also took "acceptance" of the products' prices a step further by having one of its employees, Ms. Kathy Christensen, sign each purchase order (r. at 462-67), something Section 2(b) did not require (r. at 455). These purchase orders constituted prima facie fulfillment of Section 2(b) of the Contract—acceptance, in writing, of the products' prices.

Innerlight argues the legal proposition, without citation to any legal authority, that purchase orders "are insufficient as a matter of law to constitute an 'acceptance'" of the products' prices. (Appellee's Br. 21.) This is not a principle of law; rather, it is Innerlight's conclusory, self-serving interpretation of Section 2(b) of the Contract. Section 2(b) did not require Innerlight's "acceptance" to take a certain form or to contain specific language. It required only what it said and nothing more: written acceptance of the products' prices, and the purchase orders fulfill that requirement.

And as Innerlight's own actions prove, Innerlight and Matrix *did* agree on the

³ Section 2(b) of the Contract states that "[t]he acceptance of this appointment by [Innerlight] is *conditioned upon [Innerlight's] written acceptance of [Matrix's] Product Price List* which shall not be subject to change until October 17, 2006" (emphasis added). (A copy of the Contract is attached hereto as Addendum A.)

products' pricing. (See Section II.A, pp. 19-23, in Appellant's opening brief.) These actions evidenced Innerlight's belief that it entered into a binding agreement by performing a laundry list of actions over the eighteen-month life of the Contract, all of which stemmed from the power granted Innerlight from the Contract.⁴ Curiously, when

⁴ These actions include Innerlight: (1) placing exclusive Beverly Sassoon skin care products on its website for more than a year and a half after the Contract was signed (through June 2006—months after Innerlight repudiated the Contract), including pictures of Beverly Sassoon and information touting the benefits of the products (r. at 678) (Addendum C); (2) publishing a pricelist of the Beverly Sassoon skin care products on its website (r. at 679); (3) generating several individual purchase orders, each with its own number, to purchase Beverly Sassoon products from Matrix (r. at 679) (Addendum B); (4) paying Matrix more than \$250,000 for Beverly Sassoon products (r. at 679) (Addendum D); (5) exercising its option under Section 4 of the Contract by requiring Beverly Sassoon to appear in Las Vegas to promote Innerlight's exclusive, newly launched Beverly Sassoon skin care product line (r. at 679) (Addendum E); (6) paying Defendant \$2500 for Sassoon's appearance in Las Vegas pursuant to Section 4 of the Contract (r. at 679) (Addendum E); (7) paying the travel costs and expenses, pursuant to Section 4 of the Contract, that were incurred from Sassoon's appearance in Las Vegas (r. at 679) (Addendum E); (8) exercising its option again under Section 4 of the Contract by requiring Beverly Sassoon to appear in Newark, New Jersey to promote Innerlight's exclusive Beverly Sassoon skin care product line (r. at 679) (Addendum F); (9) paying Matrix \$2500 for Sassoon's appearance in Newark, New Jersey pursuant to Section 4 of the Contract (r. at 679) (Addendum F); (10) issuing press releases from Innerlight's parent company, The Quigley Corporation, stating that Innerlight had "exclusive" rights concerning Beverly Sassoon-brand skin care products and that Beverly Sassoon had become Innerlight's spokesperson (r. at 679) (Addendum G); (11) filing an 8K statement of its parent company, The Quigley Corporation, with the Securities and Exchange Commission announcing that The Quigley Corporation had launched an exclusive Beverly Sassoon skin care product line (r. at 679-80); and (12) filing a 10-Q statement of The Quigley Corporation with the Securities and Exchange Commission announcing that it had launched an exclusive skin care line under the Beverly Sassoon brand name (r. at 680) (Addendum H).

Also, for the Court's information, a form 8K is "the 'current report' companies must file with the SEC to announce major events that shareholders should know about." U.S. Securities and Exchange Commission, *available at* <http://www.sec.gov/answers/form8k.htm>. And a form 10-Q is a quarterly report containing information that federal securities laws requires publicly traded companies to

Matrix invoiced Innerlight for Beverly Sassoon’s appearances in both Las Vegas and Newark, Matrix’s description on the invoice stated “Beverly Sassoon Appearance Fee—*Per Contract*” (emphasis added). (R. at 514.) (Add. E, F.) Matrix also billed Innerlight for Ms. Sassoon’s hotel stay and her airfare. (R. at 514.) Innerlight paid the total due, \$3548.30, on an Innerlight check, number 64868. (Copies of these documents are attached hereto as Addendum E.)

Even if the Court were to find that Innerlight purchase orders did not fulfill Section 2(b) of the Contract, Innerlight’s laundry list of actions support Matrix’s equitable arguments from its opening brief that: (1) Innerlight waived or excused the condition precedent (Appellant’s Opening Br. 23-26); (2) Innerlight ratified the Contract by reaping its benefits for eighteen months (Appellant’s Opening Br. 26-31); and (3) Innerlight is equitably estopped from denying the existence of the Contract and from being obligated to its terms and conditions (Appellant’s Opening Br. 32-34).

III. INNERLIGHT’S UCC ARGUMENTS DO NOT PRECLUDE THE ENFORCEMENT OF THE CONTRACT’S FORUM SELECTION CLAUSE.

Innerlight cited to the entire “sales” portion of the Uniform Commercial Code,⁵ UCC 2-101 to 2-807, to support its argument that this Court should affirm the trial court’s summary judgment rulings. (Appellee’s Br. 14.) But for each of Innerlight’s citations to

disclose on an ongoing basis, such as unaudited financial statements. U.S. Securities and Exchange Commission, *available at* <http://www.sec.gov/answers/form10q.htm>.

⁵ Utah adopted the Uniform Commercial Code and codified it in section 70A-1-101 *et seq.* of the Utah Code. For convenience, throughout this brief, Matrix will refer to the UCC section (e.g., UCC 2-202(1)), which perfectly corresponds with the Utah Code section (e.g., Utah Code Ann. § 70A-2-202(1)).

the UCC, there is an exception or a counter-provision that renders Innerlight's UCC arguments inert and that actually supports Matrix's arguments that the trial court erred in granting summary judgment to Innerlight and denying summary judgment to Matrix.

A. The General Application Of The Uniform Commercial Code.

The Uniform Commercial Code, which Utah wholesale adopted, "must be liberally construed and applied to promote its underlying purposes and policies" Utah Code Ann. § 70A-1a-103(1). These include simplifying and clarifying the law of commercial transactions, expanding commercial practices "through custom usage, and agreement of the parties," and making commercial law more uniform among jurisdictions. *Id.* § 70A-1a-103(1)(a) to (c). Additionally, principles of law and equity—including estoppel, ratification, and waiver—supplement the UCC.⁶ *Id.* § 70a-1a-103(2).

B. UCC Section 2-204(1): Conduct By Both Parties That Recognizes The Existence Of A Contract Is Sufficient To Show Agreement.

Overriding each and every UCC argument Innerlight makes is the principle that parties' conduct may recognize and prove the existence of a binding agreement in spite of the provisions of that agreement. Section 2-204(1) states that "[a] contract for sale of goods may be made in any manner sufficient to show agreement, *including conduct by both parties which recognizes the existence of such a contract.*" Utah Code Ann. § 70A-

⁶ The official comments to the UCC can also be very instructive in applying its principles. The Utah Court of Appeals has held that the comments to the UCC "are by far the most useful aids to interpretation and construction, promoting reasonably uniform interpretation of the code by the courts." *Power Sys. & Controls, Inc. v. Keith's Elec. Constr. Co.*, 765 P.2d 5, 11 n.3 (Utah Ct. App. 1988) (citation and quotations omitted). Therefore, where appropriate and instructive, Matrix cites to the UCC's Official Comments.

2-204(1) (emphasis added). The Official Comment to this section clarifies and endorses this idea: “appropriate conduct by the parties may be sufficient to establish an agreement.”

In this case, the parties’ conduct—particularly Innerlight’s twelve discrete actions described in footnote 4 *supra*—evidence their recognition and endorsement of the Contract. Innerlight performed under the Contract for eighteen months and reaped the benefits of the Contract for that duration. Innerlight issued press releases (Add. G), made SEC filings (Adds. H, I), advertised and sold the products (Adds. C, D), and even secured and paid for Beverly Sassoon to appear—twice—to promote the products (Adds. E, F). Innerlight could not have done any of these acts without the Contract.

Section 2-204(1) allows parties’ conduct to evidence their recognition of an agreement for the sale of goods. Innerlight’s and Matrix’s conduct for a year and a half evidenced their understanding, belief, and intent that the Contract was in effect.

C. UCC Section 2-305(4): The Parties Fixed The Products’ Prices.

Throughout its brief, Innerlight makes sporadic reference to UCC section 2-305(4) as justification for the trial court finding that no contract existed. (Appellee’s Br. 7, 15, 16, 24, 29.) In relevant part, section 2-305(4) provides that where “parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract.” Utah Code Ann. § 70A-2-305(4).

The syllogism, Matrix assumes, goes like this: (1) based on Section 2(b) of the Contract, Matrix and Innerlight did not intend to be bound unless the products’ prices were fixed; (2) Matrix and Innerlight never fixed the prices; therefore (3) there is no

contract.

The flaw in Innerlight's argument lies in point number two. Contrary to Innerlight's unfounded claim, the parties actually fixed the prices when the principals of Matrix and Innerlight negotiated and decided upon the products' prices (discussed in Section II.A, p. 20, in Appellant's Opening Brief), which is evidenced by Innerlight's several purchase orders containing the per unit prices of each product. (R. at 462-67.) These per unit prices were the same prices that Matrix and Innerlight fixed before signing the Contract. (R. at 676.) Therefore, UCC 2-305(4) is not a bar to enforcing the forum selection clause in the Contract.

D. UCC Section 2-202(1): Innerlight's Purchase Orders Are Not "Evidence Of Any Prior Agreement Or Of A Contemporaneous Oral Agreement."

Next, Innerlight argues that UCC section 2-202(1) precludes Matrix from using Innerlight's purchase orders as evidence that the parties fixed the products' prices because the prices in the purchase orders, Innerlight argues, contradict the terms of the Contract. (Appellee's Br. 20.) But section 2-202(1), by its own terms, applies only if a party tries to use a prior or contemporaneous agreement to alter the terms of an original agreement, which Matrix is not doing here. Section 2(b) of the Contract called for Innerlight, *via documentation other than the Contract itself*, to accept, in writing, the products' prices, which Innerlight did through its several purchase orders listing the per unit price for each item.⁷ Thus, Innerlight did exactly what Section 2(b) of the Contract

⁷ Innerlight implies that Section 2(b) of the Contract required Matrix to submit a company price list before Innerlight could provide written acceptance of the products' prices. (Appellee's Br. 26 n.9.) But this alleged requirement is fictional. Section 2(b)

demanded.

Section 2-202(1) states, in relevant part:

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein *may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement*

In this case, Matrix is not attempting to contradict the terms of the Contract by looking to Innerlight's purchase orders as evidence of Matrix and Innerlight fixing the prices. Rather, Section 2(b) specifically mandated Innerlight to accept, in writing, the products' prices, and Innerlight had to do that via documentation other than the Contract itself. It is impossible *not* to refer to some other documentation as evidence that Innerlight fulfilled Section 2(b), and in this case, we look to Innerlight's purchase orders.

Moreover, Innerlight's argument does not work because its purchase orders do not contradict any provision in the Contract. In fact, the Contract specifically required the parties to look to some other documentation as evidence of the products' prices. Innerlight's argument would apply only if the Contract itself recited the products' prices, and Matrix then tried to use Innerlight's purchase orders to contradict the prices established in the Contract. But that is not the case.

Additionally, even if section 2-202 applied to bar Matrix's reference to Innerlight's purchase orders as fulfillment of Section 2(b) of the Contract, subsections (1) and (2) of section 2-202 provide exceptions to the rule by allowing the parties' course of

puts the onus on Innerlight, not Matrix, to accept the products' prices, which Innerlight did via its purchase orders.

performance, and consistent additional terms, to supplement and explain the Contract.

1. Section 2-202(1) allows the parties’ “course of performance” to supplement and explain the terms of the Contract.

Contrary to Innerlight’s assertions, subsection (1) of 2-202 allows parties’ “course of performance” to explain or supplement a contract. In this case, that means Innerlight’s purchase orders, as well as Innerlight reaping the benefits of the Contract for a year and a half, evidenced that Innerlight accepted the products’ prices.

Subsection (1) of 2-202 states that terms of a contract “may not be *contradicted* by evidence of any prior agreement or of a contemporaneous oral agreement *but may be explained or supplemented . . . by course of performance* (Section 70A-2-208)” Utah Code Ann. § 70A-2-202 (emphases added).

The “course of performance” statute referred to above, section 70A-2-208, establishes what “course of performance” means and how it operates.⁸ Subsection (1) of 2-208 states that

[w]here the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

The next subsection of 2-208, subsection (2), provides that the express terms of the

⁸ Section 2-208, the “course of performance” exception, is also known as the “rule of practical construction.” Utah Code Ann. § 70A-2-208. This rule “is predicated on the common sense concept that actions speak louder than words,” and this Court adopted the rule in 1965 with *Bullough v. Sims*, 400 P.2d 20, 23 (Utah 1965) (citations and quotations omitted). The Restatement of Contracts, section 235, defines the Rule as follows: “If the conduct of the parties subsequent to a manifestation of intention indicates that all of the parties placed a particular interpretation upon it, that meaning is adopted if a reasonable person could attach it to the manifestation.”

agreement and any course of performance “shall be construed whenever reasonable as consistent with each other” Utah Code Ann. § 70A-2-208(2).

Taken together, then, 2-208(1) and (2) establish an exception to 2-202 which generally does not allow the parties’ conduct to alter or explain their agreement. The 2-208 exception looks to the parties’ course of performance to explain and clarify the meaning of the parties’ agreement, so long as the agreement calls for repeated occasions for performance. And any course of performance must be construed as consistent with the terms of the agreement.

The Contract between Innerlight and Matrix involved repeated occasions for performance, which, in this case was not limited to Innerlight issuing six separate purchase orders for more than \$250,000 worth of Matrix’s products. In addition to the purchase orders, Innerlight also performed under the Contract for eighteen months in numerous and varied ways by, inter alia, twice procuring Beverly Sassoon to appear and promote Innerlight’s products (r. at 679), advertising and selling the products on its website (r. at 678-79), issuing multiple press releases about the Contract (r. at 678-80), and making SEC filings based on its Contract with Matrix (r. at 679-80).

Construing Innerlight’s performance as consistent with Section 2(b) of the Contract (as 2-208(2) requires), it becomes evident that Innerlight intended to accept—and in fact did accept—the products’ prices.

2. Section 2-202(2) allows the Court to consider Innerlight’s purchase orders as “consistent additional terms” with the Contract.

Subsection (2) of 2-202 provides another exception, besides the “course of

performance” exception, that operates to “explain[] or supplement[]” the terms of a contract. Subsection (2) says that terms of a contract may be explained or supplemented by evidence of consistent additional terms, provided the agreement is not a complete statement of the terms of the agreement. In this case, the Contract is not an exclusive and complete statement of the terms between Innerlight and Matrix because Section 2(b) demanded that Innerlight accept the products’ prices in a separate document. Therefore, the per unit prices in Innerlight’s purchase orders fall under subsection (2) and may explain or supplement the terms of the Contract, specifically, Section 2(b).

Subsection (2) of 2-202 states, in relevant part, that terms of a contract

may not be *contradicted* by evidence of any prior agreement or of a contemporaneous oral agreement *but may be explained or supplemented:*
... (2) *by evidence of consistent additional terms* unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

In this case, Innerlight’s purchase orders fall squarely within the definition of “consistent additional terms” because Section 2(b) requires Innerlight to accept the products’ prices via documentation other than the Contract. The several purchase orders constitute the documentation required by Section 2(b), and moreover, they are consistent with the terms of the Contract. Therefore, the Court should read the purchase orders as explaining and supplementing the Contract, specifically, Section 2(b).

Innerlight may argue that the Court should not allow the purchase orders to explain or supplement the Contract as “consistent additional terms” because the Contract is “a complete and exclusive statement of the terms of the agreement.” But Section 2(b) belies that argument. That section explicitly requires the parties to look to some other

documentation, some other evidence, that Innerlight agreed to the products' prices. Therefore, the Contract was not the "complete and exclusive" statement of the parties' agreement—the price term, an integral part of any contract, was omitted, and the Contract specifically directed the parties to some other documentation for evidence of the products' prices.⁹

Therefore, this Court should look to Innerlight's purchase orders as evidence of consistent additional terms to explain and supplement the Contract.

E. UCC Section 2-208(3): The Parties' "Course Of Performance" Can Show Waiver Or Modification Of Any Term In The Contract, Including Section 2(b) And The Anti-waiver Clause.

Innerlight argues that it did not waive the condition precedent in Section 2(b) or the anti-waiver clause in Section 12 of the Contract. (Appellee's Br. 10, 28-34.) But section 2-208(3) states that course of performance is "relevant to show a waiver or modification of *any* term inconsistent with such course of performance."¹⁰

A waiver is "the intentional relinquishment of a known right." *Soter's, Inc. v. Deseret Fed. Sav. & Loan Ass'n*, 857 P.2d 935, 940 (Utah 1993) (citation and quotation omitted). There are three elements to show waiver: "(1) an existing right, benefit, or advantage; (2) knowledge of its existence; and (3) an intention to relinquish the right." *Id.* A waiver must be distinctly made, though it may be express or implied. *Id.*

⁹ Official Comment 1 to UCC 2-201 explains that "[i]n many valid contracts for sale the parties do not mention the price in express terms [F]requently the price is not mentioned since the parties have based their agreement on a price list or catalogue known to both of them and this list serves as an efficient safeguard against perjury."

¹⁰ The Official Comment to the UCC also adds that "[u]nder this section *a course of performance is always relevant to determine the meaning of the agreement*" (emphasis added).

Innerlight met each of these elements and either expressly or impliedly waived the condition precedent and the anti-waiver clause.

First, Innerlight waived the condition precedent, and all three elements for waiver are met: (1) Section 2(b) of the Contract was a right, benefit, or advantage for Innerlight; (2) Innerlight knew about Section 2(b) of the Contract (Section 12 of the Contract also states each party had the assistance of counsel in reviewing and signing the Contract); and (3) Innerlight's twelve discrete, undisputed actions make clear that Innerlight intended to relinquish the right in Section 2(b) and the anti-waiver provision in Section 12 because Innerlight performed under the Contract for a year and a half.¹¹

Second, Innerlight also waived the anti-waiver clause in Section 12 of the Contract by continuing to perform under the Contract for eighteen months (r. at 459). Although initially counterintuitive, for more than sixty years, this Court's jurisprudence has held that a party may waive an anti-waiver clause. *Living Scriptures, Inc. v. Kudlik*, 890 P.2d 7, 10 n.3 (Utah Ct. App. 1995) (citing, inter alia, *Calhoun v. Universal Credit Co.*, 146 P.2d 284, 286 (Utah 1944)) ("[C]ourts have concluded that [nonwaiver provisions] may be waived."); see also 1 White and Summers, *Uniform Commercial Code*, 4th Ed. §§ 1-6, p.41-42 ("[P]arties may . . . provide that no waiver shall bind unless in writing. This clause itself may be waived . . ."). More recently, in *State v. Pena*, this Court acknowledged that over time, it had "developed hopelessly inconsistent elaborations on

¹¹ Moreover, an anti-waiver clause in a contract does not, by itself, prevent a party from waiving any provision in the contract. *Living Scriptures, Inc. v. Kudlik*, 890 P.2d 7, 10 n.3 (Utah Ct. App. 1995) (concluding that "the best approach is to view the existence of an anti-waiver provision as merely one factor to consider in determining whether a party has waived its right under the agreement").

the basic statement of waiver principles.” 869 P.2d 932, 938 (Utah 1994) (citation omitted) (referring to both civil and criminal examples). In light of the confusion, the Court “stripped the statement of the law back to its most basic form and told the trial courts to apply it.” *Id.* (citation omitted).

Therefore, whether Innerlight waived the anti-waiver clause in Section 12 is analytically no different than the question of whether Innerlight waived any other provision of the Contract. Rather, the question of waiver of any clause “is a highly fact-dependent question” that must be determined ad hoc. *Pena*, 869 P.2d at 938.

Innerlight’s course of performance, and its exercise of rights that stemmed only from the Contract, were so pervasive that one must conclude that Innerlight explicitly or implicitly waived both Section 2(b) and the anti-waiver clause in Section 12.

F. UCC Section 2-209(5): Innerlight Failed To Timely Rescind Its Waiver.

Innerlight next argues that even if it did waive Section 2(b) and the anti-waiver provision, it timely rescinded the waivers under section 2-209(5). (Appellee’s Br. 10, 29.) But Innerlight’s alleged rescission was not timely, reasonable, or just. Further, Innerlight failed to comply with the terms of 2-209(5), which required Innerlight to provide reasonable notification to Matrix that Innerlight would expect strict compliance with the Contract.

Section 2-209(5) allows a party to retract a waiver, but only if the retracting party meets certain conditions:

[a] party who has made a waiver affecting an executory portion of the contract may retract the waiver *by reasonable notification received by the other party that strict performance will be required of any term waived*,

unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

To comply with section 2-209(5), Innerlight had to (1) provide reasonable notification to Matrix, (2) ensure that Matrix received the notification, and (3) convey that strict performance would be required of the waived terms (Section 2(b) and the anti-waiver clause).

After reaping the benefits of the Contract for eighteen months, Innerlight notified Matrix that Innerlight deemed the Contract invalid and that Innerlight would no longer be selling Beverly Sassoon products. (R. at 528, 534.) Innerlight failed to convey, however, that strict performance with Section 2(b) and the anti-waiver provision would be required, which section 2-209(5) demands. Rather, Innerlight merely stated that “it is [Innerlight’s] belief that the Contract was never accepted.” (R. at 528.)

Moreover, even if Innerlight met the three requirements in 2-209(5), which it did not, that section precludes retraction if it would be unjust in view of a material change of position in reliance on the waivers. In this case, retraction would be unjust because Matrix materially changed its position in reliance on Innerlight’s waivers of Section 2(b) and the anti-waiver clause. Most notably, Matrix forwent offering the exclusive distributorship to another entity. The Contract’s recitals state that Innerlight “desires to be the exclusive distributor of certain of [Matrix’s] BEVERLY SASSOON brand name products . . . and [Matrix] is willing to make [Innerlight] its exclusive distributor for such purposes” (R. at 454.) The exclusive distributorship would have gone to another entity but for Innerlight signing the Contract (r. at 460) and acting pursuant to it for a year

and a half. Matrix could have only one exclusive distributor. Innerlight acted as if it was, so Matrix was powerless to change this.

IV. THE TRIAL COURT INCORRECTLY RULED ON THE PARTIES' MOTIONS TO STRIKE EACH OTHER'S AFFIDAVITS.

A. Tate's Affidavit Contains Inadmissible Hearsay, So The Trial Court Should Have Stricken The Offending Paragraph.

Paragraph thirteen of Wesley Tate's Affidavit (r. at 171-73) contains inadmissible hearsay. This Court should reverse the trial court and strike the offending paragraph. (A copy of the trial court's order, r. at 878-79, is attached hereto as Addendum I.)

Rule 801(c) of the Utah Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 802 goes on to exclude hearsay evidence except as provided by the rules of evidence.

Paragraph thirteen of Tate's affidavit states: "Following the sale of certain Sassoon products purchased from Matrix, Innerlight received complaints from customers including, [sic] that a facial product caused 'burning' to the customer's skin, that a lotion was 'runny,' and that lotion pumps were inoperable." (R. at 191.)

These statements are out-of-court statements offered for their truth, i.e., that Innerlight received complaints that the Beverly Sassoon skin care products caused "burning" or were "runny." Innerlight does not contest this—it admitted that Tate made these statements to show that "Innerlight had 'received complaints'" about the products. (Appellee's Br. 40.) Therefore, the statement is hearsay, no exception applies, and the Court should exclude it under Rule 802 of the Utah Rules of Evidence.

B. The Trial Court Erred In Striking Catinella's Third Affidavit.

1. Matrix opposed Innerlight's Motion to Strike.

Innerlight argues Matrix “did not oppose [Innerlight's Motion to Strike],” and that Matrix filed “an untimely opposition to Innerlight's motion the day *after* the motion was decided,” and therefore, the trial court was correct to grant Innerlight's motion to strike. (Appellee's Br. 40.) This is both misleading and incorrect.

In late 2006, Matrix and Innerlight both filed motions for summary judgment and the accompanying affidavits. On September 29, 2006, Matrix filed its Motion to Strike Portions of Tate's Affidavit (which Innerlight had filed in support of its Motion for Summary Judgment). (R. at 411-17.) Then, on November 28, 2006, the trial court filed a Notice of Oral Argument. (R. at 735-37.) (A copy of this Notice is attached hereto as Addendum J.) The Notice stated that the Court would hear argument on January 17, 2007 on three (and only three) motions: (1) Innerlight's Motion for Summary Judgment; (2) Matrix's Motion for Summary Judgment; and (3) Matrix's Motion to Strike Portions of Tate's Affidavit. (R. at 735.) (Add. J.)

On January 4, 2007—two weeks before oral argument on the three motions above and a month and a half after the court sent the notice or oral argument—Innerlight filed its Motion to Strike Portions of the Third Affidavit of Anthony R. Catinella. (R. at 741-43, 758-63.) Under Rule 6(a) (ten filing days excludes weekends) and Rule 7(c)(1) (must file an opposition to a motion within ten days) of the Utah Rules of Civil Procedure, Matrix had at least until January 18, 2007 to file its opposition. And Matrix filed its

opposition on January 16, 2007.¹² (R. at 779.)

Innerlight's motion to strike was never noticed for argument during the January hearing. Further, even if Innerlight's motion to strike had been noticed for argument at the January 17 hearing, Matrix could not submit Innerlight's motion for decision because the briefing time had not expired under Rule 7(c)(1). And even if the parties stipulated to jointly submit Innerlight's motion to strike at the hearing (in spite of the above defects), the trial court incorrectly concluded that Matrix's opposition was untimely filed, since Matrix filed its opposition on January 16, the day before the hearing. (R. at 779.)

2. Matrix timely filed Catinella's third affidavit in conjunction with Matrix's reply memorandum in support of summary judgment.

Innerlight argues that the trial court properly struck Catinella's third affidavit (r. at 703-20) "because it was untimely." (Appellee's Br. 41.) But Rule 56(e), which specifically speaks to the use of affidavits with summary judgment motions, states that "[t]he court may permit affidavits to be supplemented or opposed by . . . further affidavits." Indeed, it is the responsibility of each party, when moving for and opposing summary judgment, to submit affidavits so that the trial court may determine if there exists a genuine issue of material fact that would preclude granting the motion. Utah R. Civ. P. 56(c). There is no rule or case law that renders an affidavit filed with a reply memorandum "untimely."

Innerlight cites *Sunridge Dev. Corp. v. RB&G Eng'g, Inc.*, 2008 UT App 29, ¶9

¹² Rule 5(b)(1)(B) of the Utah Rules of Civil Procedure states that "[s]ervice by mail . . . is complete upon sending."

n.4, 177 P.3d 644, 647 n.4 (Utah Ct. App. 2008), for the proposition that an untimely affidavit is “subject to exclusion ‘even if the results lead to a grant of summary judgment against the party seeking its introduction.’” (Appellee’s Br. 41) (quoting *Sunridge Dev.*, 2008 UT App 29, ¶9 n.4, 177 P.3d at 647 n.4). But that case is inapposite. There, the plaintiffs/appellants failed to timely submit a damages affidavit. *Sunridge*, 2008 UT App 29, ¶9, 177 P.3d at 646-47. In this case, Matrix submitted an additional affidavit in support of its Motion for Summary Judgment with its reply memorandum. There is no rule or prohibition against such a submission or that makes the affidavit “untimely.”

3. Catinella’s third affidavit complies with Rule 56(e), is based on personal knowledge, and contains no hearsay.

Finally, Innerlight argues that paragraphs 3 and 8-14 of Catinella’s third affidavit should be excluded because they are not based on personal knowledge and they are conclusory. (Appellee’s Br. 41-45.) Each of Catinella’s statements in these paragraphs is based on his personal knowledge and understanding of the history of events in this case. Admittedly, Catinella’s recollection and understanding of this history may differ from Innerlight’s recollection and affidavits, but that merely justifies the court in denying summary judgment, not in striking the affidavit.

For example, Innerlight argues that Catinella’s statement that the parties “agreed upon the prices at which [Innerlight] would sell” the products is a legal conclusion. (Appellee’s Br. 42.) With this statement, Catinella merely recites his lay understanding of his negotiations and conversations with the principals of Innerlight. Nothing in his statement purports to convey what Innerlight or its principles believed or a legal

conclusion.¹³

V. PURSUANT TO RULE 24(a)(9), MATRIX REQUESTS ATTORNEYS' FEES AND COSTS ON APPEAL BASED ON SECTION 12 OF THE CONTRACT.

Rule 24(a)(9) of the Utah Rules of Appellate Procedure requires that “[a] party seeking to recover attorney’s fees on appeal shall state the request explicitly and set forth the legal basis for such an award.” Pursuant to that rule, Matrix hereby explicitly requests attorneys’ fees and costs on appeal based on Section 12 of the Contract¹⁴ and based on Utah law that allows for attorneys’ fees when provided for in a contract. *Stewart v. Utah Pub. Serv. Comm’n*, 885 P.2d 759, 782 (Utah 1994) (“[A]ttorney fees cannot be recovered unless authorized by statute or contract.”).

CONCLUSION

Innerlight cannot revise history to disown its clear belief and intent to abide by the Contract after abiding by its terms for eighteen months, all while reaping the Contract’s benefits. This Court should reverse the trial court and grant summary judgment for Matrix, thereby enforcing the forum selection clause and sending the parties to Florida to litigate. In the alternative, based on many disputed issues of material facts, and viewing the facts in a light most favorable to Matrix, the Court should reverse the grant of summary judgment for Innerlight and remand to the trial court.

¹³ Without reciting each of the eight disputed paragraphs and independently analyzing each paragraph, the argument above applies to each of the disputed paragraphs. Catinella repeatedly recites precisely what the Contract stated (r. at 703-07, ¶¶ 3, 12) and the factual history of the parties’ discussions and negotiations (r. at 705, ¶¶ 8-14).

¹⁴ Section 12 of the Contract allows the prevailing party in litigation concerning the Contract to received attorneys’ fees and costs, including for “any and all appeals” (R. at 459.)

RESPECTFULLY SUBMITTED this 7th day of May 2008.

HILL, JOHNSON & SCHMUTZ, L.C.

A handwritten signature in black ink, appearing to read 'Quesenberry', is written above a horizontal line.

Stephen Quesenberry

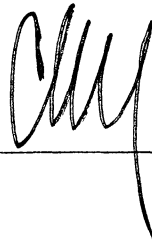
Charles L. Perschon

Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May 2008, two true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** were hand-delivered to the following:

Mr. David L. Arrington
Mr. Matthew G. Grimmer
Mr. Thomas J. Burns
Durham Jones & Pinegar
111 East Broadway, #900
Salt Lake City, Utah 84770

A handwritten signature in black ink, appearing to be 'CJG', is written over a horizontal line.

Tab A

EXCLUSIVE DISTRIBUTOR AGREEMENT

THIS EXCLUSIVE DISTRIBUTOR AGREEMENT is made and entered into as of the _____ day of _____, 2004, between THE MATRIX GROUP, LLC ("Company"), and INNERLIGHT, INC. ("Distributor").

WITNESSETH

WHEREAS, Company is licensed to sell products under the brand name "BEVERLY SASSOON" throughout the world; and

WHEREAS, Distributor desires to be the exclusive distributor of certain of Company's BEVERLY SASSOON brand name products in the multi-level marketing/network marketing industry within the territory more particularly described below, and Company is willing to make Distributor its exclusive distributor for such purposes, all in accordance with and pursuant to the terms and conditions more fully set forth below;

NOW, THEREFORE, in consideration of the above, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties herein do hereby agree as follows:

1. Company Representations and Warranties.

The Company hereby represents and warrants to Distributor as follows:

(a) That the Company:

(i) has a license to utilize the BEVERLY SASSOON name on, among other things, the Company's cosmetics, cosmeceuticals, nutraceuticals, tanning, make-up, vitamins, baby-products and pet products; and

(ii) such license is for a stated term at least as long as the term of this Agreement; and

(iii) the aforesaid license is in full force and effect and Company is not in default thereunder; and

(iv) Company will keep said license in effect for the full term of this Agreement; and

(b) That in connection with the License Agreement for the BEVERLY SASSOON name with Beverly Sassoon International, LLC ("Licensor"), the Licensor has warranted that it has the rights to the BEVERLY SASSOON name and that it will indemnify Company from all losses, claims, damages, awards, penalties and injuries which may arise in

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connection with any claim by any third party of any alleged infringement of copyright, trademark or other intellectual property rights pertaining to the use of the BEVERLY SASSOON name; and

(c) That in the event any party makes any claim for the infringement of copyright, trademark or other intellectual property rights concerning the use of the BEVERLY SASSOON brand name in connection with any of the Products (as defined below), Company will, promptly following its receipt of notice of such claim from Distributor, call upon Licensor to provide the indemnifications required under the License Agreement between the Company and the Licensor and that Company will hold Distributor harmless from all losses, claims, damages, awards, penalties or injuries arising out of such infringement claims.

2. Appointment of Distributor.

(a) Subject to the terms and provisions set forth in this Agreement, Company hereby appoints Distributor as the exclusive distributor for the Products (defined below) within the Territory (defined below) insofar as, but only insofar as, the Industry (defined below) is concerned. As used herein, the term "Products" shall mean the Company's cosmetics, cosmeceuticals, nutraseuticals, tanning, make-up, vitamins, baby-products and pet products from time to time bearing the BEVERLY SASSOON name. As used herein, the term "Territory" shall include all worldwide markets, including the United States, except for Asia (Asia is expressly excluded from the Territory). As used herein, the term "Industry" shall mean the multi-level marketing and network marketing industries. Company expressly agrees that it will not sell Products bearing the BEVERLY SASSOON name within the Territory to any other party operating within the Industry and that Company will not itself engage in the Industry to sell Products bearing the BEVERLY SASSOON name on a multi-level marketing/network marketing basis. It is expressly understood and agreed, however, not by way of limitation, that the Company may sell BEVERLY SASSOON branded products or services other than the Products to any other parties of its choosing, and that Company may sell Products bearing the BEVERLY SASSOON name to any other parties of its choosing who are not involved in the Industry, in any market (worldwide, regional, local or other), whether on a retail, wholesale or any other basis, and that Company may sell Products bearing the BEVERLY SASSOON name to companies engaged in the Industry within the continent of Asia, all without being in violation of this Agreement.

(b) The acceptance of this appointment by Distributor is conditioned upon Distributor's written acceptance of Company's Product Price List which shall not be subject to change until October 17, 2006.

3. Term.

Subject to the termination rights elsewhere set forth in this Agreement, the term of this Agreement shall commence as of the date first set forth above and shall end on October 17, 2013. All obligations of the Company and all rights of Distributor shall cease and terminate at the end of the aforesaid term and the Company shall thereafter be under no restrictions insofar as the sale of Products is concerned.

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4. Beverly Sassoon Appearances.

The Company advises Distributor that Company has the right to require the person Beverly Sassoon to make at least four (4) personal appearances per year and that the Company will permit Distributor to utilize up to four (4) such personal appearances provided that Distributor pays Beverly Sassoon the required sum of Two Thousand Five Hundred Dollars (\$2,500.00) per appearance plus the Distributor shall be obligated to pay the expenses of Beverly Sassoon associated with the making of such appearances. It is understood that such appearances are subject to mutually agreeable scheduling times.

5. Minimum Sales Requirements and Termination Rights of Company If Minimum Sales Requirements Are Not Met.

Distributor acknowledges, understands and agrees that Distributor is receiving exclusive rights to sell Products within the Industry and within the Territory solely because Distributor has agreed, and hereby agrees, to purchase Products in at least the minimum amounts set forth below at all times during the term of this Agreement. Distributor agrees to comply with each "Minimum Purchase Requirement" established below and Distributor acknowledges that Company may terminate this Agreement and all of Distributor's rights hereunder and all of Company's obligations hereunder in the event Distributor fails to satisfy any Minimum Purchase Requirement at any time, which termination shall be effective upon Company's giving Distributor ten (10) days written notice of such termination. The Minimum Purchase Requirements relating to the Products are as follows:

(a) Company may terminate this agreement if Distributor does not purchase at least Seven Hundred Fifty Thousand Dollars (\$750,000.00) of Products during the twelve-month period commencing October 18, 2004 and ending October 17, 2005; and

(b) Company may terminate this agreement if Distributor does not purchase at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) of Products within the twelve (12) month period commencing October 18, 2005 and ending October 17, 2006; and

(c) During each twelve (12) month period thereafter through and including October 17, 2013, Distributor must purchase at least Four Million Dollars (\$4,000,000.00) of Products from Distributor during each such twelve (12) month period (i.e., Distributor must purchase at least Four Million Dollars (\$4,000,000.00) of Products from Distributor during the period from October 18, 2006 through October 17, 2007, and such Four Million Dollars (\$4,000,000.00) per year purchase of Products requirements from Distributor shall continue for each twelve (12) month period thereafter).

In order to satisfy the Minimum Purchase Requirements imposed on Distributor pursuant to this Agreement, the Distributor must:

(i) purchase the specified amount of Products within the specific year in question and cause Company to receive full payment for such Products within each such respective year; and



(ii) notwithstanding the foregoing, Distributor must purchase an amount of Products from Company each quarter year period (i.e., each October 18 through each January 17, and each January 18 through each April 17, and each April 18 through July 17, and each July 18 through October 17 during each of such years) equal to one-quarter of the Minimum Purchase Requirement Amount applicable to the year in question, with payment to be received by Company prior to the end of each such applicable quarter.

6. Limitations and Prohibitions on Distributor.

It is understood and agreed that

(a) Distributor shall not have or acquire any rights to any patents, trademarks, servicemarks, trade secrets or any other intellectual property rights relating in any manner to any of the Products or in or to the name of BEVERLY SASSOON.

(b) Distributor shall have no rights to use the name BEVERLY SASSOON on any product other than the Products. It is expressly understood and agreed that Distributor has no rights to use the name BEVERLY SASSOON on "Human Hair Care" related products as such would violate the terms of Company's license with Licensor.

(c) Distributor shall make no claims of health benefits, other benefits, or results customers could anticipate receiving from BEVERLY SASSOON Products unless such claims are expressly authorized in writing by Company or are contained on labels or other sales materials provided by Company. Distributor shall not make any claims concerning the Products, or concerning the BEVERLY SASSOON name, or concerning Beverly Sassoon the person without first receiving the prior written authorization to do so from Company which approval may be given or withheld within the sole discretion of Company.

(d) Distributor shall not repackage any Product, remove any label or other identifying marking from any Product, or otherwise alter any packaging or label of any Product at any time. Distributor shall not tamper with, alter, modify, change or otherwise affect any Product sold to it by Company.

(e) Distributor shall not sell, produce, manufacture or otherwise be involved in or with respect to any goods or products similar to or in competition in any way with any of the Products during the term of this Agreement.

(f) Distributor shall comply with all laws, statutes, rules and regulations of any and all governmental authorities having jurisdiction over its business operations.

(g) Distributor shall market and sell the Products, and authorize her distributors to market and sell the Products, only within the Territory and only within the Territory. Neither Distributor nor any party acquiring the Products through Distributor shall sell the Products other than through the multi-level marketing/network marketing channels.



7. Disclaimers.

Except as expressly set forth herein, Company makes no representations or warranties to Distributor, either express or implied. SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, COMPANY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE IN RESPECT OF THE PRODUCTS

8. Default.

(a) The occurrence of any of the following events shall constitute an Event of Default by Distributor under this Agreement:

(i) Distributor shall fail to satisfy any Minimum Purchase Requirement it is obligated to comply with pursuant to the provisions of this Agreement or Distributor shall otherwise fail to pay to Company any amount which Distributor is obligated to pay to Company;

(ii) Distributor shall breach or fail to perform any other duty, obligation or agreement on Distributor's part to be complied with or performed pursuant to this Agreement and Distributor shall have failed to satisfy or cure such default within ten (10) days after the giving of written notice of such default to Distributor by Company; or

(iii) Distributor shall be or become the subject of any bankruptcy or insolvency proceedings.

(b) Upon the occurrence of any Event of Default, Company may exercise any one or more of the following rights and remedies, all of which shall be mutual and cumulative and not exclusive:

(i) Terminate this Agreement by giving written notice of such termination to Distributor; and/or

(ii) Have and recover from Distributor all damages suffered by Company by reason of the occurrence of such Event of Default together with all reasonable attorneys fees and disbursements expended or incurred by Company in enforcing or pursuing its rights under this Agreement; and/or

(iii) Pursue any other rights or remedies available to the Company at law or in equity.

9. Relationship.

Nothing contained in this Agreement shall be construed as constituting a joint venture, partnership, employer/employee relationship, franchise or other association between the parties hereto. Distributor is acting only in the capacity of an independent contractor and shall have



no authority, express or implied, to bind, obligate or make any commitment or representation for or on behalf of Company.

10. Notices.

Any notice required or permitted to be given by any party to the other under this Agreement shall be in writing and shall be delivered by nationally recognized overnight delivery service, or by certified mail with return receipt requested service, delivered to the address for the other party set forth below, or such changed address as shall have been provided by the other party by a notice duly given hereunder:

If to Company:

The Matrix Group, LLC
1177 George Bush Boulevard
Suite No. 201
Delray Beach, Florida 33483

If to Distributor:

Innerlight, Inc.
867 East 2260 South
Provo, Utah 84606

11. Assignment of Agreement.

Neither this Agreement nor any rights, duties or obligations hereunder may be assigned by Distributor without the prior written consent of Company, which may be given or withheld in its sole discretion.

12. Miscellaneous.

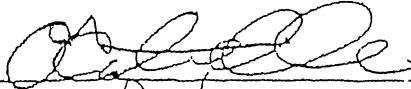
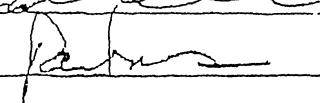
This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns (provided however, that nothing contained herein shall be construed as authorizing any party to assign any rights or instruments which it has agreed not to assign pursuant to provisions hereinabove contained). This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be amended or modified except by a written instrument signed by each of the parties hereto. In the event any party commences any action or proceeding to enforce its rights hereunder, the prevailing party or parties in any such action shall be entitled to recover all of their costs and expenses, including reasonable attorneys fees, incurred in connection therewith from the non-prevailing party or parties, both in connection with the original action relating thereto and any and all appeals therefrom. No party shall be construed as having waived any of its rights hereunder unless such waiver shall be in writing signed by the party against whom such waiver is being sought. Neither the failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. This Agreement shall be construed and interpreted under the laws of the State of Florida and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Palm Beach County, Florida, and each party hereto hereby consents to the jurisdiction of such courts. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be

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construed against the drafter thereof. No representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument. All references herein to the singular shall include plural, and all references herein to the masculine gender shall include the feminine and neuter genders, and vice versa.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first set forth above.

THE MATRIX GROUP, LLC

By 
Its 

INNERLIGHT, INC.

By Stephen M. McAuley
Its President

Tab B

1 14 06 07:17a

Jaffe

504721

IMMEDIATE TRAVEL

FAX: (801) 330-7505

Mar. 27 2004 03:31PM PM

Oct 26 04 03:53p

Pick Call 111a

501 060 0010

P.1

Oct-26-04 01:33 PM INNERLIGHT: Patch

8016350623

P.1



801 E 2250 E
Provo, UT 84606

Phone 801-856-0000
Fax 801-856-0622

PURCHASE ORDER

PO NUMBER

21001

The TO number must appear on all related documents including packing slip and invoice.

TO
Natural Beauty
1177 Canyon Blvd #101
DELRAY BEACH, FL 33483
Phone No: (561) 330-7505
Fax No: (561) 330-7505
Vendor ID, No: 822

FROM TO
InnerLight Inc.
801 E 2250 E
PROVO, UT 84606
Phone (801) 856-0805

P.O. DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	EXCISE	TERMS	WARRANTY
10/26/2004	Kathy Christensen				None	1 yr

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5,000	01000B	01000B: OxyFlex Box	0.3800	1,900.00
5,000	520010B	520010B: Day Cream with SPF 20 Box	0.3800	1,900.00
5,000	520020B	520020B: 24-7 pHyaluron Treatment Box	0.4100	2,050.00

TOTAL: 6,850.00

1. Please read the entire order before signing.

2. Please check the quantity, description, and price of items, delivery method, and shipping charges.

3. Please notify us immediately if you are unable to fulfill the order.

4. Please return to
Natural Beauty Inc.
801 E 2250 E
Provo, UT 84606

[Signature]
Approved by _____ Date _____

11 14 06 07:17a

Jaffee

12 04 11.08a

Rick Catinella

CT-11-04 04.40 PM INNERLIGHT: Kathy



E 2280 S
Provo, UT 84606

Phone 801-855-0805
Fax 801-855-0822

Address:
177 George Bush Blvd #101
Delray, FL 33482

Phone No: (888) 862-3227
Fax No: (561) 330-7598
Vendor ID. No: 622

501 860 8816

P. 3

8016550622

P. 03

PURCHASE ORDER

PO NUMBER: 20079

The PO number will appear on all related correspondence, shipping papers, and invoices.

SHIP TO
InnerLight Inc
887 E 2280 S
PROVO, UT 84606

Phone (801) 855-0805

O. DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	DISCOUNT	TERMS	WAREHOUSE
07/11/2004	Kathy Christensen				None	

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5,000	520000	520000: Sassoon Facial Cleanser	2.7500	13,750.00

TOTAL: 13,750.00

- Please send two copies of your invoice.
- Enter this order in accordance with the price terms, delivery method and instructions listed above.
- Please notify us immediately if you are unable to ship as specified.
- Send invoice to:
InnerLight Inc
PO Box 111

Authorized by

Date

1 14 00 07:18a

12 04 11:09a

11-04 04:40 PM

Jaffee
Rick Catinella
INNERLIGHT: Kathy

9544251
561 000 001
8010554627

P. 00



E 2250 S
SUT-2250

Phone 801-856-0905
Fax 801-856-0977

Matrix
1177 George Bush Blvd #101
Dolny, FL 33482

Phone No: (888) 862-3227
Fax No: (581) 330-7596
Vendor ID. No. 622

SHIP TO
InnerLight Inc.
887 E 2250 S
PROVO, UT 84608

Phone (801) 856-0905

PURCHASE ORDER

PO NUMBER: 20980

The PO number will appear on all related correspondence, shipping papers, and invoices.

Q. DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	DISCOUNT	TERMS	WAREHOUSE
01/11/2004	Kathy Christensen				None	

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5,000	620010	520010; Sassoan Day Cream with SPF 20	5.8000	28,500.00


TOTAL: 28,500.00

1. Please send two copies of your invoice.

2. Verify the order in accordance with the prices, terms, delivery method and quantities listed above.

3. Please notify us immediately if you are unable to ship as specified.

4. Send invoice to:
InnerLight Inc.
887 E 2250 S
Provo, UT 84608


Authorized by: _____ Date: _____

954425

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Jaffee

561 860 8816

P. 5

8616396622

P. 05

12 01 11:09a

Rick Catinella

ICT-11-04 04:49 PM INNERLIGHT: Kathy

PURCHASE ORDER

PO NUMBER: 20001

The PO number must appear on all related correspondence, shipping papers, and invoices.

E. 2260 B
PO BOX 116005Phone: 801-855-0805
Fax: 801-855-0872Matrix
1177 George Bush Blvd #101
Delray, FL 33482SHIP TO
InnerLight Inc.
887 E 2260 B
PROVO, UT 84605

Phone (801) 855-0805

Phone No: (888) 862-3227
Fax No: (888) 330-7688
Vendor ID. No: 822

P.O. DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	DISCOUNT	TERMS	WAREHOUSE
10/11/2004	Kathy Christiansen				None	

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5,000	520020	520020: Sessoon 24:7 pHydration TR Treatment.	5,7600	28,750.00

TOTAL: 28,750.00

- Please send two copies of your invoice.
- Enter this order in accordance with the price, terms, delivery method and conditions listed above.
- Please notify us immediately if you are unable to ship as specified.
- Send invoice to:
InnerLight Inc.

[Signature]
Authorized by

Use

11 14 06 07:19a Jaffee
 t 12 04 11:00a Rick Catinella
 10/11/04 04:47 PM INNERLIGHT: Kathy

9544230
 001 000 001
 0010550022 P. 02



1 E 2280 S Phone 801-855-0505
 Provo, UT 84609 Fax 801-855-0822

Matrix
 1177 George Bush Blvd #101
 Delray, FL 33482

Phone No: (888) 882-3227
 Fax No: (561) 330-7588
 Vendor ID. No. 822

SHIP TO
 InnerLight Inc.
 887 E 2280 S
 PROVO, UT 84608
 Phone (801) 855-0505

PURCHASE ORDER

PO NUMBER: 20062

The PO number must appear on all related correspondence, shipping papers and invoices.

P.O. DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	DISCOUNT	TERMS	WAREHOUSE
10/11/2004	Kathy Christiansen				None	

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
5,000	620030	620030: Dermal Peel Complex	22.5000	112,500.00

TOTAL: 112,500.00

1. Please send two copies of your invoice.
2. Enter this order in accordance with the price, terms, delivery method and any other conditions listed below.
3. Please notify us immediately if you are unable to ship as purchased.
4. Send invoice to:
 InnerLight Inc.
 887 E 2280 S
 Provo, UT 84608

Kathy Christiansen
 Authorized by Date



2260 S
UT 84606

Phone 801-655-0605
Fax 801-655-0622

PO NUMBER: 20978

The PO number must appear on all related correspondence,
shipping papers, and invoices.

rix
7 George Bush Blvd #101
ray, FL 33482

SHIP TO
InnerLight Inc.
867 E 2260 S
PROVO, UT 84606

Phone No: (888) 862-3227
Fax No: (561) 330-7596
Vendor ID. No. 622

Phone (801) 655-0605

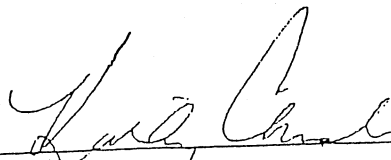
DATE	REQUISITIONER	SHIP VIA	F.O.B. POINT	DISCOUNT	TERMS	WAREHOUSE
11/2004	Kathy Christiansen				None	

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
10,000	510000	510000: Skin-Deep OxyPlex™	7.8500	78,500.00

9042
941

TOTAL: 78,500.00

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send invoice to:
InnerLight Inc.
867 E 2260 S
Provo, UT 84606


Authorized by _____ Date _____

Tab C

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alkalizing supplements



I Dropped 31 Pounds in 31 days!



BEVERLY
SASSOON

the secret to
beautiful skin

skincare & cosmeceuticals

deutsche version english version 中文版

securityMETRICS
✓Certified

Steve Hale 859-336-8488

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[Click here for the Convention "Pay As You Go" Registration](#)



BEVERLY SASSOON

The Secret of Beautiful Skin



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- Contact Me

deutsche
version
english
version
中文版

Beverly Sassoon

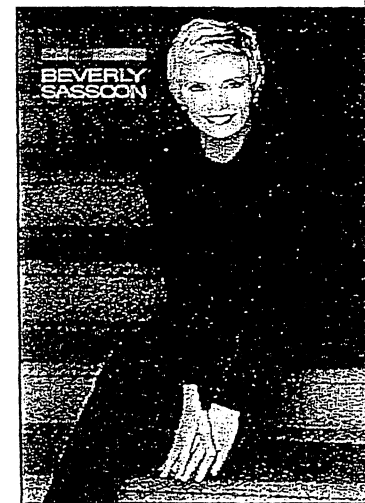
Healthy skin is essential to one's appearance. It marks vitality, and allows a person to exude health and energy. We searched through scores of skincare options to create a skin restoration and health program that could mimic what today's most highly trained dermatologists and plastic surgeons offer their patients - without our customers ever having to set foot in a doctor's office.

DermaPlex Therapie is a program backed by science and created by doctors - and proven to work. It offers the synergy of the Rendon Rx Therapeutic Skincare line, a dermatologist-created exfoliating peel and skin maintenance system, and the miracle of OxyPlex, a product used by dermatologists and plastic surgeons worldwide to speed skin restoration and enhance cosmetic procedure results.

The six-week peel will help to revitalize worn, aged and damaged skin; OxyPlex will rebuild cells by delivering much-needed nutrients and oxygen and reversing skin damage; and the maintenance cleanser and creams will help keep skin looking radiant and youthful.

The DermaPlex Therapie system is the only kit in the world that marries these two powerful skincare products - and only doctors offered these individual programs in the past. Now they are available to you in a comprehensive system that will not disrupt your life, but will restore your skin to its healthiest state.

Beverly Sassoon



Skin Deep OxyPlex • DermaPeel Complex • Day Creme with SPF 20
24-7 pHydration Creme • pHaze 1 Cleanser • Rendon Complex

Shop Now

Join Now



BEVERLY SASSOON

The Secret of Beautiful Skin

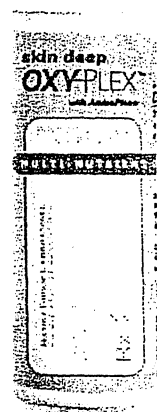


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Beverly Sassoon

Skin Deep OxyPlex

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- Our Company
- About Beverly Sassoon
- Our Secrets
- Prep Work
- The Doctors
- The Products
 - Skin Deep OxyPlex
 - DermaPeel Complex
 - Day Creme with SPF 20
 - 24-7 pHydration Creme
 - pHaze 1 Cleanser
 - Rendon Complex
- Before and After
- Shop for Products
- FAD
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Oxygen Treatment • Oxygen and Free Radicals • About OxyPlex

Skin Deep OxyPlex with Pure Oxygen Clinically proven, scientifically designed OxyPlex is a multi-nutrient oxygen treatment that is nothing short of revolutionary. Recent studies published in the Journal of Physiology reveal that the epidermis and dermis receive oxygen from atmospheric air, which means that the skin actually breathes. However, as our skin ages, it loses its ability to retain adequate levels of oxygen. By age 30, the ability for cells to retain oxygen decreases by almost 30 and by age 50, it decreases by over 50. As the skin's oxygen supply diminishes, lines, wrinkles and dull or lifeless skin becomes more pronounced. When we oxygenate our skin, we allow it to breathe. The benefits of oxygen in promoting wound repair and cellular renewal are well-documented. By infusing pure oxygen into the skin, we can improve its health and encourage the cells to purify, clarify, and eliminate waste and toxins more quickly.

What are the benefits of pure oxygen for your skin?

- Glowing Complexion
- Cellular Repair
- Collagen Stimulation
- Destruction of Bacteria

Reduced nutrition to the epidermis from aging is one factor that causes cellular exhaustion and weakness. Without proper nutrition to the epidermis, cellular metabolism of the epidermal cell is slowed. Furthermore, the transportation of certain unwanted byproducts of cellular metabolism, such as free radicals are reduced. This is an exceptional product benefit, as the accumulation of free radicals within the cell can lead to undesirable mutational damages in the cell and, ultimately, cancer. OxyPlex is one of the few products in the world that has unlocked the secret of a successful oxygen delivery system, using pure oxygen.



BEVERLY SASSOON

The Secret of Beautiful Skin

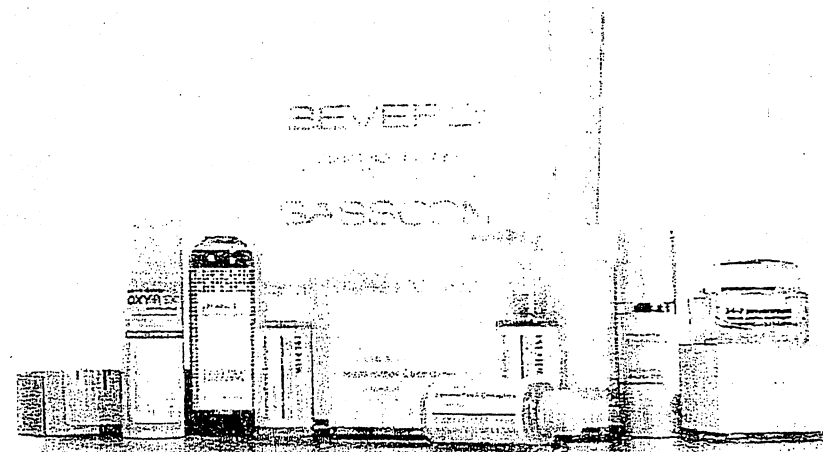


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Beverly Sassoon

Products

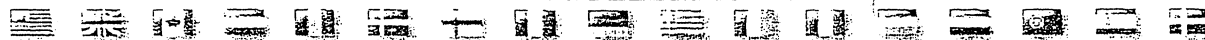
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- About Beverly Sassoon
- Our Secrets
- Prep Work
- The Doctors
- The Products
 - Skin Deep OxyPlex
 - DermaPeel Complex
 - Day Creme with SPF 20
 - 24-7 pHydration Creme
 - pHaze 1 Cleanser
 - Rendon Complex
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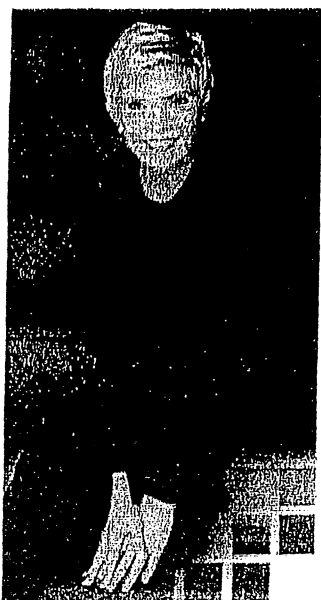
[Skin Deep OxyPlex](#) • [DermaPeel Complex](#) • [Day Creme with SPF 20](#)
[24-7 pHydration Creme](#) • [pHaze 1 Cleanser](#) • [Rendon Complex](#)

Shop Now

Join Now



I Dropped 31 Pounds in 31 days! Steve Hale, 859-336-8488



WHEN YOU LOOK GOOD,
WE LOOK GOOD.

BEVERLY
SASSOON

skin deep
OxyPlex™
with Amino-Plex®

an evolution in cellular rebirth

Board certified plastic surgeon
Michael F. McGuire, M.D., F.A.C.S.,
has seen, firsthand, the skin
healing and rejuvenating powers
of **OxyPlex™**.



Dr. McGuire, an associate clinical
professor in the Department of
Plastic Surgery at UCLA and chief
of plastic surgery at St. John's
Hospital in Santa Monica, Calif.,
has been using **OxyPlex™** in
conjunction with peels and other
cosmetic procedures for years.

OxyPlex™ is essential for
cellular rebirth.

It is clinically proven to work at
the cellular level to help patients'
skin heal at a significantly faster
rate after derma peels and other
cosmetic procedures.

The combination of the **OxyPlex™**
with the **Rendon Rx Complex®**
makes the **BEVERLY SASSOON
DermaPlex Therapie™ System**
a truly revolutionary at-home
skincare product.

Let the power of **OxyPlex™**
breath new life into your skin.

the best kept secret
for a decade is no longer
a secret.



Beverly Sassoon

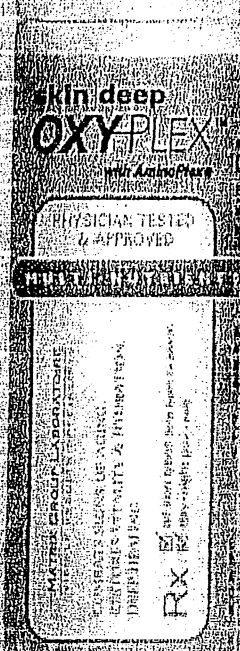
OXYPLEX™ -CLINICALLY TESTED FOR SAFETY AND EFFECTIVENESS AT A MAJOR AMERICAN UNIVERSITY.
AND USED BY PLASTIC SURGEONS AND DERMATOLOGISTS WORLDWIDE WITH ASTOUNDING RESULTS.
OXYPLEX™ MULTI-NUTRIENT OXYGEN TREATMENT RESTORES WHAT TIME TAKES AWAY. OXYPLEX™
TREATMENT THAT KEEPS IT BEAUTIFUL, HEALTHY & YOUTHFUL.

OXY

skin deep

clinically proven
scientifically backed

P
EX



skin deep **OxyPlex™** with Amino-Plex®

*the most advanced
topical treatment available
without a prescription*

Plastic surgeons, dermatologists and other medical specialists have used **OxyPlex™** for more than a decade to accelerate healing after cosmetic procedures and to treat difficult-to-heal wounds.

In clinical studies (IRB approval) at a leading university, UCLA, **OxyPlex™** has been shown to reduce irritation and improve healing faster with better results after the following procedures:

Laser Hair Removal – less irritation

Chemical Peels – faster healing, better result

Laser Resurfacing – helps reduce recovery time, improves results

Medical Microdermabrasion – helps reduce irritation, improves results

Hair Transplantation – helps reduce irritation, improves survival rate

Rosacea – reduces redness, reduces irritation, improves skin quality

Wound Care – helps reduce scarring, promotes healing

Tab D



InnerLight Inc.
867 East 2260 South
Provo, Utah 84606
(801) 655-0605

Zions First National Bank
American Fork Office
609 N. Spain Road
American Fork, UT 84003

31-5
1240

065451

DATE

02/25/2005

***22,873.92**

PAYABLE IN US FUNDS

*TWENTY-TWO THOUSAND EIGHT HUNDRED TWENTY-THREE AND 92/100 Dollars

Pay to the
Order of NATURAL BRONZE
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD.
DELRAY BEACH, FL 33483

Kathy Christ
Richard E. Hall

006545100 000000540 089 00428 700

DATE	INVOICE NO	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
1/31/2004	20980 1506		3,162.40	0.00	3,162.40
1/01/2005	1515	4200 SPONG PAD/PUMPS	19,661.52	0.00	19,661.52

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InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

65116

12/16/2004

AY
J THE
RDER
F

NATURAL BRONZE

**4,794.51

PAYABLE IN US FUNDS

Four Thousand Seven Hundred Ninety-Four and 51/100 ***** Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD.
DELRAY BEACH, FL 33483

[Signature]
[Signature]

SAFEGUARD
SAFEGUARD

MO: INVOICE# 1505

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InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK, UT 84003

31-5
1240

65084

12/9/2004

PAY
TO THE
ORDER
OF

NATURAL BRONZE

**90,652.50

PAYABLE IN US FUNDS

Ninety Thousand Six Hundred Fifty-Two and 50/100*****

Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD.
DELRAY BEACH, FL 33483

Keith Anderson
Michael E. Healy

EMO: INVOICE# 1468

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00065084 124000054 089 00428 7



InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

65105

12/9/2004

NATURAL BRONZE

**10,535.25

PAYABLE IN US FUNDS

Dollars

Thousand Five Hundred Thirty-Five and 25/100*****

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Larry Chase
Richard E. Holtz

SAFEGUARD SEC
SAFEGUARD SEC

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867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK, UT 84003

31-5
1240

65086

12/9/2004

PAY
TO THE
ORDER
OF

NATURAL BRONZE

**20,514.30

PAYABLE IN US FUNDS

Dollars

Twenty Thousand Five Hundred Fourteen and 30/100*****

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Larry Chase
Richard E. Holtz

SAFEGUARD SEC
SAFEGUARD SEC

MEMO: INVOICE# 1466

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InnerLight Inc.
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867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

65087

12/9/2004

PAY
TO THE
ORDER
OF

NATURAL BRONZE

**23,166.75

PAYABLE IN US FUNDS

Dollars

Twenty-Three Thousand One Hundred Sixty-Six and 75/100*****

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Larry Chase
Richard E. Holtz

SAFEGUARD SEC
SAFEGUARD SEC

MEMO: INVOICE# 1467

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00065087 124000054 089 00428 7

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROMARKS FOR SECURITY FEATURES



InnerLight Inc
Phone 801-655-0605
867 E 2260 S
Provo UT 84606

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ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

64876

11/1/2004

Y
THE
DER

NATURAL BRONZE

One Thousand One Hundred Fifty-Five and 49/100*****

***155.49

PAYABLE IN US FUNDS

Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

MO : INVOICE# 1451

Richard E. Holt

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⑈00064876⑈ ⑆124000054⑆ 089 00428 7⑈

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InnerLight Inc
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

64905

11/5/2004

Y
THE
DER

NATURAL BRONZE

Three Thousand Eight Hundred Eighty-Four and 00/100*****

***3,884.00

PAYABLE IN US FUNDS

Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

EMO : INVOICE# 1452

Richard E. Holt

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InnerLight Inc
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK, UT 84003

31-5
1240

64910

11/5/2004

PAY
TO THE
ORDER
OF

NATURAL BRONZE

Two Thousand Fifty-Seven and 00/100*****

***2,057.00

PAYABLE IN US FUNDS

Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Richard E. Holt

EMO : INVOICE# SB166

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InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

64868

10/31/2004

THE
ER

NATURAL BRONZE

***3,548.30

PAYABLE IN US FUNDS

Three Thousand Five Hundred Forty-Eight and 30/100***** Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Richard E. Welch

MO: INVOICE# 1445

THIS DOCUMENT CONTAINS SENSITIVE INFORMATION

00064868 124000054 089 00428 711

THIS DOCUMENT CONTAINS SENSITIVE INFORMATION



InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

64865

10/31/2004

THE
DER

NATURAL BRONZE

***78,500.00

PAYABLE IN US FUNDS

Seventy-Eight Thousand Five Hundred and 00/100***** Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Richard E. Welch

MO: INVOICE# 1446

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Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK UT 84003

31-5
1240

64864

10/31/2004

THE
ORDER
OF

NATURAL BRONZE

***35,785.90

PAYABLE IN US FUNDS

Thirty-Five Thousand Seven Hundred Eighty Five and 90/100***** Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD
DELRAY BEACH, FL 33483

Richard E. Welch

EMO: INVOICE# 1447

THIS DOCUMENT CONTAINS SENSITIVE INFORMATION

00064864 124000054 089 00428 711

Tab E

INNOVATIVE

TRAVEL SERVICES

2000 E OAKLAND PARK BLVD
FORT LAUDERDALE, FL 33304
(954) 563-5996
FAX (954) 563-5997
E-mail: innovativetravel@aol.com

SALES PERSON: DL
CUSTOMER NBR: 954563996

ITINERARY/INVOICE NO. 0060079
EQNDY

DATE: 29 SEP 04
PAGE: 01

TO: NATURAL BRONZE
1177 GEORGE BUSH BLVD
SUITE 201
DELRAY BEACH, FL 33493

THANK YOU FOR FAVORING US WITH YOUR BUSINESS. WE MUST PAY THE AIRLINE FOR ALL TICKETS ISSUED. WE WILL BE RECEIVING PAYMENT FOR YOUR TICKETS. PLEASE REMIT FROM THIS INVOICE.

FOR: BASSOOK/BEVERLY

\$\$\$

DEALS



LODGING



CRUISES



VACATIONS



CARS/RAIL

15 OCT 04 - FRIDAY

ALL AMERICA WEST
LV LOS ANGELES
DEPART: TERMINAL 1
ARRIVE: MAIN TERMINAL
SEAT 2C

FL1:873

FIRST CLASS

1145A

EQP: BOEING 737 300

39MIN

1244P

NON-STOP

HOTEL LAS VEGAS
MANDALAY BAY RESORT
MANDALAY BAY RESORT AND CASINO
3950 LAS VEGAS BLVD SOUTH
LAS VEGAS NV 89119
PHONE 702-632-7777
FAX 702-632-7234
GUARANTEED LATE ARRIVAL
CONFIRMATION QNDY
NON SMOKING KING

OUT-17OCT

2 NIGHTS

1 ROOM DELUXE, 1 KING BED

RATE-299.00USD PER NIGHT

CANCEL 48 HOURS PRIOR TO ARRIVAL

MANDALAY BAY SPECIAL RATES

17 OCT 04 SUNDAY

ALL AMERICA WEST
LV LAS VEGAS
DEPART: MAIN TERMINAL
ARRIVE: TERMINAL 1
SEAT 2A

FL1:104

FIRST CLASS

1203P

EQP: AIRBUS A320

01HR 17MIN

120P

NON-STOP

MCO XDB150000991

BILLED TO AX372703601501076

25.00

TOTAL BASE

25.00

TOTAL TAX

0.00

NET CC BILLING

25.00

TOTAL AMOUNT DUE

0.00

THANKS FOR TRAVELING WITH US

YDA HA

Page 1 of 1

S. RUSSO

From: "America West Airlines" <hpagentlink.reservations@americawest.com>
 To: <suerusso@bellsouth.net>
 Sent: Wednesday, September 29, 2004 12:14 PM
 Subject: America West Confirmation - UEGFGL



INNOVATIVE
TVL SVCS

DINA LAMBORGHINI
(954) 563-5996

Confirmation - UEGFGL

Thank you for flying America West. Your purchase is now complete and your reservation has been electronically ticketed. No paper tickets will be sent.

Confirmation UEGFGL
 Date Issued 09/29/04 at 09:10 AM
 Form of Payment American Express *****1076
 Grand Total \$326.70
 Bill to BEVERLY SASSOON
 Agency INNOVATIVE TVL SVCS
 Agent DINA LAMBORGHINI

**Passenger Information**

Party of 1	Frequent Flyer #	Ticket #	Seats
BEVERLY SASSOON		40115760328420	2C, 2A

Special Needs

Passenger Special Needs

Depart	Flight #	From	To	Arrive	Details
11:45 AM	873	Los Angeles, CA	Las Vegas, NV	12:44 PM	Meal:
Fri, Oct 15		Boeing 737-300		Fri, Oct 15	Class: First
12:03 PM	104	Las Vegas, NV	Los Angeles, CA	01:20 PM	Meal:
Sun, Oct 17		Airbus A320		Sun, Oct 17	Class: First

1 Passenger(s)

Fare \$286.52

Taxes & Fees \$40.18

Grand Total \$326.70**Terms and Conditions**

- Ticket is non-transferable
- Ticket expires one year from date of issue
- This ticket is non-refundable. Any change to this reservation (including flight, dates, or cities) is subject to a \$100 change fee per passenger. The new itinerary will be priced at the lowest available published fare at the time of change, which may result in a fare increase.
- Travel is valid on America West or America West Express only

9/29/2004

DINA LAMBORGHINI

40115760328420

10/21/2004 10:03 FAX 7026327273

MANDALAY BAY A/R

002

Reservations
1-877-632-7000
TTY 877-632-7101



MANDALAY BAY

Resort & Casino

Guest Information
1-702-632-7777
FAX 1-702-632-7234

3950 Las Vegas Blvd. South / Las Vegas, Nevada 89119

Name BEVERLY SASSOON
Address

Room MB 24122
Arrive 10/15/04
Depart 10/17/04
Persons 1
Deposit Amount

Company Name **SABRE**
Group Code PPLEGDS
Travel Agent No.

Page 1
Recv No 382491651312

Thank you for staying with us

DATE	REFERENCE	DESCRIPTION	CHARGES	BALANCE
10/15/04	382749002144	ROOM CHARGE MB24122	289.00	
		TAX	26.01	
10/15/04	382745150948	APPLIED DEPOSIT	315.01-	
		XXXXXXXXXXXXX4005		
10/15/04	382745156073	ROOM SERVICE	23.16	
10/16/04	382759002234	ROOM CHARGE MB24122	299.00	
		TAX	26.91	
10/16/04	382755205532	ROOM SERVICE	10.95	
10/16/04	382755241376	IN ROOM BOTTLED WATER	5.32	
10/17/04	382765295277	ROOM SERVICE	16.25	
10/17/04	382765321219	FRONT DESK AMERICAN EXP	381.59-	
		XXXXXXXXXXXXX3056		

THANK YOU FOR STAYING AT MANDALAY BAY

I agree to be personally liable if the indicated person, firm, or corporation fail to pay any of the charges. Further, to have you sign any pre-authorized credit card in the event I fail to sign to charge record on check-out. The Mandalay Bay Resort & Casino assumes no responsibility for money or valuables not deposited in our safety deposit boxes, which are provided without charge at the casino cage.



MANDALAY BAY
Resort & Casino

Guest Card

Arrival Date Rm. No.
Departure Date Check Out 11:00 am

Signature
VALID ONLY WHEN SIGNED. EXPIRES UPON DEPARTURE



MANDALAY BAY
Resort & Casino

Guest Card

Arrival Date Rm. No.
Departure Date Check Out 11:00 am

Signature
VALID ONLY WHEN SIGNED. EXPIRES UPON DEPARTURE

Invoice

Natural Bronze-Matrix
1177 George Bush Blvd.
Suite #201
Delray Beach, FL 33483

Date	Invoice #
10/21/2004	1445

Bill To
Innerlight Kathy Christiansen 867 E 2260 S Provo, UT 84606

Quantity	Description	P.O. No.	Terms	Project
		Travel	Due on receipt	
		Rate		Amount
	Beverly Sassoon Appearance Fee-Per Contract		2,500.00	2,500.00
	America West - Los Angeles/Las Vegas		351.70	351.70
	Mandalay Bay - Las Vegas		696.60	696.60



InnerLight Inc.
Phone: 801-655-0605
867 E 2260 S
Provo, UT 84606

ZIONS FIRST NATIONAL BANK
AMERICAN FORK OFFICE
609 E STATE RD AMERICAN FORK, UT 84003

31-5
1240

64868

10/31/2004

PAY
TO THE
ORDER
OF

NATURAL BRONZE

Three Thousand Five Hundred Forty-Eight and 30/100*****

PAYABLE IN US FUNDS

Dollars

GULF STREAM BUILDING
2nd FLOOR, Suite 201
1177 GEORGE BUSH BLVD.
DELRAY BEACH, FL 33483

MEMO: INVOICE# 1445

11*0006486811 121240000541 089 00428 71			
		Total	33,548.30

Tab F

Matrix Group LLC

1355 West Palmetto Park Road
Suite #348
Boca Raton, FL 33486

Invoice

Date	Invoice #
3/21/2005	1507

Bill To
Interlight Kathy Christiansen 867 E 2260 S Provo, UT 84606

		P.O. No.	Terms	Project
			Due on receipt	
Quantity	Description	Rate		Amount
	Beverly Sassoon Appearance Fee-Per Contract Newark, New Jersey March 11th and 12th, 2005	2,500.00		2,500.00
			Total	\$2,500.00

Payment History

10/25/2006

Customer: J... InnerLight Inc

Date Recei... 04/04/2005

Payment M...

Check No

Payment A... 2,500 00

Memo

Invoices Paid, Statement Charges Paid and Payment Deposit

Type	Date	Number	Amount	Pmt Balance
Invoice	03/21/2005	1507	-2,500 00	0.00

Tab G

Quigley

The Nature of Human Health

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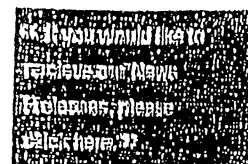


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Press Releases

Contact:

David K. Waldman/John W. Heilshorn The Quigley Corporation
Lippert Heilshorn & Associates Carl Fonash
(212) 838-3777 Shareholder Relations
dwaldman@lhai.com (267) 880-1111



The Quigley Corporation Announces Launch of BEVERLY SASSOON Product Line by Its InnerLight Subsidiary

DOYLESTOWN, PA. - November 3, 2004 - The Quigley Corporation (Nasdaq: QGLY) today announced that InnerLight, Inc., a wholly-owned subsidiary within the company's Health and Wellness Segment, has secured Beverly Sassoon as a spokesperson and launched an exclusive skin care line under the BEVERLY SASSOON brand name.

The BEVERLY SASSOON skin care line has been created and endorsed by Marta Rendon, M.D., President-Elect of the American Academy of Dermatology as well as Michael F. McGuire, M.D., F.A.C.S., a board certified faculty member at the UCLA Medical Center in Los Angeles.

Stephanie McAnaly, President of InnerLight, said, "Beverly Sassoon's decades of experience in beauty care products, as well as her celebrity status, are a perfect fit for these revolutionary tested skin-care products. InnerLight is thrilled to market the BEVERLY SASSOON skin care brand."

The BEVERLY SASSOON exclusive skin care products are all tested by the Doctors who developed them. The line of products is available in the BEVERLY SASSOON Dermaplex Theraple Kit. The Kit includes the DermaPeel complex facial peel system, as well as OxyPlex, a soothing agent shown in testing to reduce the recovery time from skin treatments. Together, these doctor-developed cosmeceuticals provide a safe, at home, skin-care system that can provide the same results as costly treatments. Also available in the kit is the BEVERLY SASSOON Day Crème and 24-7 Hydration Night Cream, with patented Rendon Rx Complex. Each of the BEVERLY SASSOON products available in the kit can also be purchased separately.

The Quigley Corporation (Nasdaq: QGLY, <http://www.Quigleyco.com>) is a leading developer and marketer of diversified health products including the COLD-EEZE® family of patented zinc gluconate glycine (ZIGG™) lozenges and sugar free tablets. In September of 2004, The Company has also formed a wholly owned subsidiary, Quigley Manufacturing, Inc. with the acquisition of two FDA approved facilities to manufacture its COLD-EEZE® branded lozenges. InnerLight, Inc., a wholly owned subsidiary, was formed in January 2001 for the purpose of introducing new products to the marketplace through a network of independent distributors. In addition to the Company has formed Quigley Pharma Inc.

(<http://www.QuigleyPharma.com>), a wholly owned ethical pharmaceutical subsidiary, to introduce a line of naturally derived patented prescription drugs. The Quigley Corporation's customers include leading national wholesalers and distributors, as well as independent and chain food, drug and mass merchandise stores and pharmacies.

Certain statements in this press release are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 and involve known and unknown risk, uncertainties and other factors that may cause the company's actual performance or achievements to be materially different from the results, performance or achievements expressed or implied by the forward-looking statement. Factors that impact such forward-looking statements include, among others, changes in worldwide general economic conditions, changes in interest rates, government regulations, and worldwide competition.

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1000 Highway 101
 Suite 100, 1000 Highway 101
 Doylestown, PA 19340
 Phone: (215) 345-0919
 Fax: (215) 345-5920
www.quigleyco.com

Unique and Diversified Healthcare Opportunity

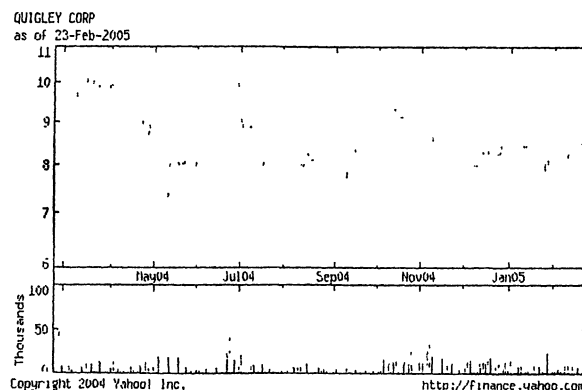
Snapshot

February 25, 2005

The Quigley Corporation develops and markets diversified healthcare products. For nearly a decade, the Company has been developing, manufacturing, and marketing its proprietary Cold-Eeze® family of patented zinc gluconate glycine (ZIGG™) cold-remedy lozenge products. It has also developed a variety of product extensions, which include Cold-Eeze® Sugar Free Tablets, Cold-Eeze® Lozenge Honey Lemon Flavor, Cold-Eeze® Green Tea with Honey, Cold-Eeze® Bubble Gum, and Cold-Eeze® Spearmint Gum. The Company has also launched Kidz-Eeze™ Sore Throat Pops. In January of 2001, the Company established an ethical pharmaceutical segment, Quigley Pharma, to diversify by gaining entry into the prescription drug market, and ensure safe and effective distribution of any potential new products. Quigley Pharma addresses medical conditions that may be overlooked by large capitalization pharmaceutical companies. Prior to the creation of Quigley Pharma, the Company founded Darius International Inc., which specializes in introducing proprietary products (specifically health and wellness products) into the marketplace through a network of independent representatives.

Recent Financial Data

Ticker (Exchange)	QGLY (NASDAQ)
Recent Price (02/25/05)	\$8.25
52-Week Range	\$6.92-\$10.63
Shares Outstanding	11.7 million
Market Cap. (mm)	\$96.0
Average 3-month vol.	12,151
Insider +5% Owners	34.5%
Institutional Owners	2.0%
EPS (as of 12/30/04)	\$0.03
Employees	131



Key Points

- The Quigley Corporation's Cold-Eeze® product is the only such cold product available with the patented ZIGG™ formulation, clinically proven effective in two studies for reducing the duration and severity of common cold symptoms by 42%. Cold-Eeze® has national distribution throughout the U.S. in well-known drug and mass merchandise stores and pharmacies such as Wal-Mart, Target, Walgreens, CVS Corp., Sam's Club, and Costco, among others.
- Quigley Pharma is developing a diversified pipeline of compounds including but not limited to (1) QR-333 for **diabetic peripheral neuropathy**, for which the compound is undergoing a series of toxicity studies to support the safety of this naturally-derived compound prior to beginning a human Phase IIB dose ranging study; (2) QR-336 for systemic radiation, for which encouraging results were seen in a preliminary non-Good Laboratory Practices (GLP) animal study of this naturally-derived radio protective compound against ionizing radiation; (3) QR-435 for **influenza**, which has demonstrated efficacy in significantly reducing the severity of illness in ferrets infected with the influenza A virus; and (4) QR-440, a naturally-derived compound developed to treat **arthritis** and related inflammatory disorders.
- For QR-435, Quigley Pharma is considering initiation of a Phase II Proof of Concept human clinical trial in Europe, or in Israel, and may undertake further animal model studies to determine if the formulation is suitable for the treatment of additional indications, including **severe acute respiratory syndrome**.

Recent Events

02/24/2005—The Quigley Corporation reported net sales of \$17.8 million, an increase of 8.3%, for the fourth quarter ended December 31, 2004, compared to \$16.4 million reported for the same period in 2003. For the year ended December 31, 2004, net sales were \$43.9 million, an increase of 5.9%, compared to \$41.5 million in 2003.

01/24/2005—Announced a research and development update for its wholly-owned Quigley Pharma (Ethical Pharmaceuticals) subsidiary, which is developing natural-source prescription medicinals for Influenza A, radiation dermatitis, and diabetic neuropathy.

12/20/2004—Announced that Doctors Mark Lebwohl and Phillip A. Low have been appointed to the scientific advisory board of Quigley Pharma, Inc.

11/05/2004—In response to news reports citing a lawsuit filed in Bucks County, PA, by eight consumers who are taking legal action against The Quigley Corporation, company officials said they had no knowledge of the lawsuit until a faxed complaint was received at 2:15 PM EST on November 5, 2004. The Company has yet to be officially served, and upon a cursory look at the faxed documents, the company considers the suit to be frivolous and without merit, and will defend it vigorously. The company reaffirmed the safety of its Nasal Spray due to completion of clinical safety studies conducted prior to retail introduction in September of 2003.

11/03/2004—Announced that InnerLight, Inc., a wholly-owned subsidiary within the company's Health and Wellness Segment, had secured Beverly Sassoon as a spokesperson and launched an exclusive skin care line under the BEVERLY SASSOON brand name.

10/28/2004—Reported third quarter financial results. Net sales for the third quarter of 2004 were \$9.7 million compared to \$9.9 million reported for the same period in 2003. For the nine-months ended September 30, 2004, net sales were \$26.2 million, compared to \$25.1 million in 2003.

10/13/2004—An 8-K filed with the SEC on September 13, 2004 stated that The Quigley Corporation notified its customers of its decision to discontinue the Cold-Eeze® Cold Remedy Nasal Spray product within its line of cold remedy products. The decision was made because the product has not developed into a viable entry in the nasal spray cold remedy category. Since its launch approximately one year ago, the product has not met either the Company's sales expectations or its return on investment projections. Based on the Company's preliminary estimates, the discontinuation of the nasal spray product will result in an approximately \$422,000 write-off of inventory and an approximately \$974,000 charge to net sales resulting from anticipated customer returns of the product. As a result of all charges, the Company's results for the third quarter will be adversely impacted by approximately \$1,361,000. At this time, the Company does not anticipate any additional future charges.

10/12/2004—Announced that the U.S. Patent and Trademark Office has approved the issuance of a patent for the company's QR-440, filed on April 23, 2003, for a naturally-derived compound developed for the treatment of arthritis and related inflammatory disorders. The company is preparing to begin preclinical testing, leading to a submission of an Investigational New Drug application to the U.S. FDA for potential approval as a prescription drug.

10/05/2004—Announced the completion of the asset purchase with JOEL, Inc., as announced on August 20, 2004, for approximately \$5.1 million, which includes \$4.1 million in cash and \$1.0 million of the Company's stock. The transfer of assets includes inventory, as well as land, buildings, machinery and equipment of two manufacturing facilities, located in Lebanon and Elizabethtown, Pennsylvania. JOEL, Inc. has been the exclusive manufacturer of the Company's Cold-Eeze® Lozenge since its launch in 1995.

08/20/2004—Signed an asset purchase and sale agreement with JOEL, Inc. for \$5.1 million, which includes \$4.1 million in cash and \$1.0 million of the Company's stock.



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Quigley Increases Revenues for the Fourth Quarter and Fiscal Year

- Profitability Continues in 2004 while Investing \$3.2 Million in R&D -

DOYLESTOWN, Pa., Feb. 24 /PRNewswire-FirstCall/ -- The Quigley Corporation (Nasdaq: QGLY) today reported net sales of \$17.8 million, an increase of 8.3%, for the fourth quarter ended December 31, 2004, compared to \$16.4 million reported for the same period in 2003. For the year ended December 31, 2004, net sales were \$43.9 million, an increase of 5.9%, compared to \$41.5 million in 2003.

Net sales of the Company's Cold Remedy segment increased 10.1% for the fourth quarter of 2004 as compared to 2003. Net sales of the Health and Wellness segment decreased 9.4% during the quarter, due to a decline in the number of active domestic independent representatives, which was partially offset by an increase of 14.1% in this segment's European sales as compared to 2003.

The increase in net sales for the year ended December 31, 2004 reflects an 11.5% increase in the Company's Cold Remedy segment and also reflects a 3.2% decrease in net sales for the Health and Wellness segment, which were offset by this segment's gains in international distribution of 135.4%. Even though the incidence of colds during 2004 were fewer than the previous year, the Company's Cold Remedy net sales increase for the year ended December 31, 2004 reflects the success of expanded targeted advertising, marketing initiatives and new product extensions of COLD-EEZE(R), which have generated greater consumer awareness and purchasing of our products.

Net income for the fourth quarter ended December 31, 2004 was \$2.0 million, or \$0.13 per share, compared to net income of \$2.5 million, or \$0.17 per share, for the same period last year. Net income for the year ended December 31, 2004 was \$453,000, or \$0.03 per share, compared to a net income of \$675,000, or \$0.05 per share, for the same period last year. During the fourth quarter and year ended December 31, 2004, the Company incurred research and development costs of \$837,000 and \$3.2 million, respectively, as compared to \$766,000 and \$3.4 million, for the comparable periods of 2003. Additionally, net income margins by segments for the year 2004 are relatively consistent with net income margins attained in 2003.

Gross profit margins for the quarter and year ended December 31, 2004 remained relatively unchanged as compared with the same periods last year. Net income for the fourth quarter and year ended December 31, 2004 were primarily driven by profit gains from the increased sales, which were offset by an increase of \$1.0 million in advertising costs. The fiscal year results were also affected by a \$178,000 increase in other income, which was offset by a charge to gross profit margins of \$1.4 million, or \$0.09 per share, related to the discontinuation of the Company's COLD-EEZE(R) Cold Remedy Nasal Spray product. This charge includes a \$672,000 write-off of nasal spray inventory and a \$680,000 reduction to net sales resulting from anticipated customer returns of the product.

No tax or tax benefits to reduce income or losses are provided for the quarters and year ended December 31, 2004 and 2003, since the Company is in a net operating loss carry-forward position, which is from the cumulative effect

of deductions attributed to options, warrants and unrestricted stock from previous years' taxable income.

On October 1, 2004, the Company acquired the assets of JoEL, Inc., encompassing inventory, land, buildings, machinery and equipment of two manufacturing facilities, located in Lebanon and Elizabethtown, Pennsylvania for approximately \$5.1 million. The facilities are FDA approved and have been the exclusive manufacturing sites of the Company's COLD-EEZE(R) lozenge since its launch in 1995. The purchase of the manufacturing facilities allowed for the establishment of Quigley Manufacturing Inc., which protects the proprietary manufacturing process of COLD-EEZE(R) and is anticipated to improve cost efficiencies as volume production increases and allow for the manufacture of other brands.

Guy J. Quigley, Chairman, President and Chief Executive Officer stated, "We are pleased with our results for 2004 which reflect increased sales of our core products and greater market penetration of our COLD-EEZE(R) Cold Remedy products which enabled us to further fund pharmaceutical research and development. In addition to increasing annual revenue, gross margins for the year would have increased without the previously mentioned \$1.4 million one-time costs associated with a product discontinuation.

"We expect that our recently introduced new or improved products including COLD-EEZE(R) Bubble Gum and COLD-EEZE(R) 'Green-Tea with honey' lozenges will garner greater consumer acceptance and enhance product sales. We will continue to develop products that appeal to adults as well as a younger demographic, which could represent a significant opportunity for expansion in market penetration and future growth.

"The main core of our Health and Wellness Company, our Supergreens(TM) line of products developed by Dr. Robert O. and Shelley Redford Young, continues to move forward with loyal distributors. The Company is also excited by the launch of an exclusive skin care line under the BEVERLY SASSOON brand name to diversify this segment's product offerings.

"We also remain focused on expanding our wholly-owned Ethical Pharmaceuticals subsidiary, Quigley Pharma, which is developing natural-source prescription medicinals for Diabetic Neuropathy, Systemic Radiation, Influenza A, and Rheumatoid Arthritis. We continue moving forward with our development and testing phases of ethical pharmaceutical drugs and are confident that this segment of our business will be a source of future growth for the Company," concluded Mr. Quigley.

The following is a list of formulations currently in the Quigley Pharm pipeline and an update on their progress:

Diabetic Neuropathy -- QR 333: Per the FDA's instructions at the last Pre-IND Meeting for the continued development of this drug; the compound is undergoing a series of toxicity studies to support the safety of this naturally derived compound for the relief of symptoms of diabetic peripheral neuropathy, prior to beginning a human Phase IIB dose ranging study. The company expects the toxicity studies to be completed by June 2005. The company hopes to begin pivotal studies on this compound in 2005.

Systemic Radiation -- QR336: There were encouraging results seen in a preliminary non-GLP animal study of this naturally derived radio protective compound against ionizing radiation: A pre-IND meeting was held at the FDA in October of 2004 with the Division of Medical Imaging and Radiopharmaceutical Drug Products. A GLP controlled animal study of the QR 336 formulation for the Radioprotection/Treatment of Radiation Lethality Induced by Four MeV Photons in the C3H Mouse will begin this year after a short series of experiments to further define the compound's method of action.

Influenza A -- QR435: Retroscreen LTD. at The University of London has started a final animal model influenza study in preparation for a proposed human Proof Of Concept Study to start in mid-2005. The study "Prophylactic potential of different QR-435 antiviral nasal spray formulations in the

Tab H

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Quigley Corp · 10-Q · For 3/31/05

Filed On 5/6/05 2:56pm ET · SEC File #21617 · Accession Number 921895 5-630

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of	Filer	Filing	As/For/On Date/Time	Issuer	Agent
6/05	Quigley Corp	10-Q	3/31/05 5:14		William Grund, Representative

Quarterly Report · Form 10-Q Table of Contents

Document/Exhibit	Description	Pages	Size
1: 10-Q	Quarterly Report	HTML	139 K
2: EX-31	Certification per Sarbanes-Oxley Act (Section 302)	HTML	10 K
3: EX-31	Certification per Sarbanes-Oxley Act (Section 302)	HTML	10 K
4: EX-32	Certification per Sarbanes-Oxley Act (Section 306)	HTML	6 K
5: EX-32	Certification per Sarbanes-Oxley Act (Section 306)	HTML	6 K

10-Q · Quarterly Report Document Table of Contents

[\(FC\)](#) [\(sequential\)](#) [\(alphabetic\)](#) [Top](#)

1	1st Page	• Alternative Formats (RTF, XML, et al.)
2	Item 1. Condensed Consolidated Financial Statements 3-13	• Condensed Consolidated Financial Statements
"	Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations 14-20	• Condensed Consolidated Financial Statements 3-13
"	Item 1. Legal Proceedings 20-21	• Controls and Procedures
3	Item 1. Condensed Consolidated Financial Statements	• Defaults Upon Senior Securities
14	Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	• Exhibits
20	Item 3. Quantitative and Qualitative Disclosures About Market Risk	• Legal Proceedings
"	Item 4. Controls and Procedures	• Legal Proceedings 20-21
"	Item 1. Legal Proceedings	• Management's Discussion and Analysis of Financial Condition and Results of Operations
21	Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	• Management's Discussion and Analysis of Financial Condition and Results of Operations 14-20
"	Item 3. Defaults Upon Senior Securities	• Other Information
"	Item 4. Submission of Matters to a Vote of Security Holders	• Quantitative and Qualitative Disclosures About Market Risk
"	Item 5. Other Information	• Submission of Matters to a Vote of Security Holders
"	Item 6. Exhibits	• Unregistered Sales of Equity Securities and Use of Proceeds

This is an EDGAR HTML document rendered as filed. [[Alternative Formats](#)]

10-Q	1st Page of 22	TOC	Top	Previous	Next	Bottom	Just 1st
see document							

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the quarterly period ended MARCH 31, 2005

OR

() TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Transition period from _____ to _____

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the Patent Office of the United States Commerce Department for the use of Cold-Eeze(R) as a prophylactic for cold prevention. The new patent application is the result of the adolescent study at the Heritage School facility.

In 2003, the Company announced the findings of a prospective study, conducted at the Heritage School facility in Provo, Utah, in which 170 children, 12 to 18 years, were given Cold-Eeze(R) lozenges both symptomatically and prophylactically from October 5, 2001 to May 10, 2002. The study found a 54% reduction in the most frequently observed cold duration. These subjects not requiring treatment most frequently experienced symptom duration of 11 days versus 5 days when Cold-Eeze(R) lozenges were administered, a reduction of 54%.

The Company is subject to federal and state laws and regulations governing the health and safety of users of the Company's products. Cold-Eeze(R) is a homeopathic remedy that is subject to regulations by various federal, state and local agencies, including the United States Food and Drug Administration ("FDA") and the Homeopathic Pharmacopoeia of the United States.

-15-

10-Q	16th Page of 22	TOC	1st	Previous	Next	Bottom	Just 16th
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HEALTH AND WELLNESS

Innerlight, through Innerlight Inc., its wholly owned subsidiary, is a direct selling company specializing in the development and distribution of proprietary health and wellness products, including herbal vitamins and dietary supplements for the human condition, primarily within the United States and since the second quarter of 2003, internationally. During the fourth quarter of 2004, Innerlight launched an exclusive skin care line under the Beverly Sassoon brand name to diversify this segment's product range.

The continued success of this segment is dependent, among other things, on the Company's ability:

- o To maintain existing independent representatives and recruit additional successful independent representatives. Additionally, the loss of key high-level distributors could negatively impact future growth and revenues;
- o To continue to develop and make available new and desirable products at an acceptable cost;
- o To maintain safe and reliable multiple-location sources for product and materials;
- o To maintain a reliable information technology system and internet capability. The Company has expended significant resources on systems enhancements in the past and will continue to do so to ensure prompt customer response times, business continuity and reliable reporting capabilities. Any interruption to computer systems for an extended period of time could be harmful to the business;
- o To execute conformity with various federal, state and local regulatory agencies both within the United States and abroad. With the growth of international business, difficulties with foreign regulatory requirements could have a significant negative impact on future growth. Any inquiries from government authorities relating to the Company's business and compliance with laws and regulations could be harmful to the Company;
- o To compete with larger more mature organizations operating within the same market and to remain competitive in terms of product relevance and business opportunity;
- o To successfully implement methods for progressing the direct selling philosophy internationally; and
- o To plan strategically for general economic conditions.

Any or all of the above risks could result in significant reductions in revenues and profitability of the Health and Wellness segment.

CONTRACT MANUFACTURING

From October 1, 2004, this manufacturing entity, now called Quigley Manufacturing Inc. ("QMI"), a wholly owned subsidiary of the Company, has continued to produce lozenge product along with performing such operational tasks as warehousing and shipping the Company's Cold-Eeze(R) products. In addition to that function, QMI produces a variety of hard and organic candy for sale to third party customers in addition to performing contract manufacturing activities for non-related entities. QMI is an FDA-approved facility.

...naturally-derived prescription

Tab I

David L. Arrington (4267)
Matthew G. Grimmer (9692)
DURHAM, JONES & PINELGAR
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Salt Lake City, Utah 84110-4050
Telephone: (801) 415-3000

FILED
Fourth Judicial District Court
of Utah County, State of Utah
4/16/07 MMH Deputy

Thomas F.J. MacAniff
PA Attorney I.D. No. 01895
Ursula H. Leo
PA Attorney I.D. No. 91281
EASTBURN AND GRAY, P.C.
60 East Court Street
Doylestown, PA 18901
Telephone (215) 345-7000
Attorneys for Plaintiff Innerlight, Inc.

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

INNERLIGHT, INC., Plaintiff, vs. THE MATRIX GROUP, LLC Defendant.	<p>ORDER (1) GRANTING PLAINTIFF'S MOTION TO STRIKE PORTIONS OF THE THIRD AFFIDAVIT OF ANTHONY R. CANTINELLA AND (2) DENYING DEFENDANT'S MOTION TO STRIKE PORTIONS OF TATE'S AFFIDAVIT</p> <p>Civil No. 060400775</p> <p>Judge Fred D. Howard</p>
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Defendant The Matrix Group, LLC ("Matrix"), filed its Motion to Strike Portions of Tate's Affidavit. Plaintiff Innerlight, Inc. ("Innerlight") moved to strike paragraphs 3, 6-14 and Exhibits A & B of the Third Affidavit of Anthony R. Cantinella. Matrix filed this affidavit after

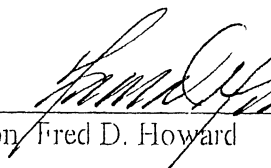
Innerlight's briefing had closed along with Matrix's reply memorandum in support of Matrix's motion for summary judgment. These motions came on for on January 17, 2007, in conjunction with the parties' cross motions for summary judgment. David L. Arrington and Matthew G. Grimmer appeared for Plaintiff, Innerlight Inc. Stephen Quesenberry and Charles L. Perschon appeared for Defendant, Matrix. The parties agreed to submit both motions.

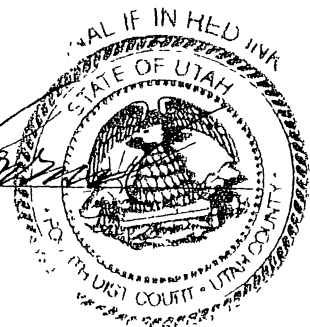
Having studied the motions, authorities and affidavits, the Court ORDERS AS FOLLOWS:

1. Plaintiff Innerlight Inc.'s Motion to Strike Portions of the Third Affidavit of Anthony R. Cantinella, which was unopposed, is GRANTED.
2. Defendant The Matrix Group, LLC's Motion to Strike Portions of Tate's Affidavit is DENIED.

Dated April 16, 2007.

BY THE COURT


Hon. Fred D. Howard



APPROVED AS TO FORM

Stephen Quesenberry
Charles L. Perschon
Attorneys for The Matrix Group, LLC

Tab J

FILED
Fourth Judicial District Court
of Utah County, State of Utah

11/28/06 Wm Deputy

4TH DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH

INNERLIGHT INC,	:	NOTICE OF
Plaintiff,	:	ORAL ARGUMENT
	:	
vs.	:	Case No: 060400775 CN
	:	
THE MATRIX GROUP,	:	Judge: FRED D HOWARD
Defendant.	:	Date: November 28, 2006

ORAL ARGUMENT is scheduled.

Date: 01/17/2007

Time: 10:30 a.m.

Location: Second Floor, Rm 202
FOURTH DISTRICT COURT
125 N 100 W
PROVO, UT 84601

Before Judge: FRED D HOWARD

The Court has set aside 90 minutes to hear oral argument on the following motions:

1. Innerlight's Motion for Summary Judgment
2. Defendant's Motion for Summary Judgment
3. Defendant's Motion to Strike Portions of Tate's Affidavit

Dated this 28 day of November, 2006.



District Court Deputy Clerk

Case No: 060400775
Date: Nov 28, 2006

The Court will provide interpreters for criminal cases and domestic violence cases involving protective orders or stalking injunctions. (Fees in criminal cases may be imposed at the judge's discretion.) IF YOU NEED AN INTERPRETER IN A CRIMINAL CASE OR DOMESTIC VIOLENCE CASE PLEASE NOTIFY THE COURT at (801)429-1006 (five days before the hearing, if possible).

FOR ALL OTHER CASES, you must bring someone with you to interpret. If you do not know someone who can help you, the names of court interpreters you can hire are listed on the courts' website at <http://www.utcourts.gov/resources/interp/certified.htm>. If you do not have access to the internet, ask the court clerk to print off a copy of this list for you.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) should call TERI at (801)429-1112 at least three working days prior to the proceeding. (For TTY service call Utah Relay at 1-800-346-4128 or 711)

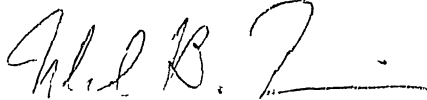
Case No: 060400775
Date: Nov 28, 2006

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 060400775 by the method and on the date specified.

METHOD	NAME
Mail	THOMAS F J MACANIFF OTHER PARTY 60 EAST COURT STREET DOYLESTOWN, PA 18901
Mail	DAVID L ARRINGTON ATTORNEY PLA 111 E BROADWAY STE 900 SALT LAKE CITY UT 84111
Mail	STEPHEN QUESENBERRY ATTORNEY DEF 3319 N UNIVERSITY AVE PROVO UT 84604

Dated this 28 day of November, 2006.



Deputy Court Clerk