

1995

## Weaver v. Brite Music : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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JULIE WEAVER AND CATHERINE  
PALMER,

APPELLANTS,

BRITE MUSIC ENTERPRISES, INC.

APPELLEE.

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Case No. 950512-CA

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BRIEF OF APPELLEE

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On Appeal from the Third Judicial District Court  
of Salt Lake County, State of Utah  
The Honorable Glenn K. Iwasaki, District Judge

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Case No. 950512-CA

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BRIEF OF APPELLEE

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JURISDICTIONAL STATEMENT

Appellee concurs with the Jurisdictional Statement set forth in the Brief of Appellants.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the trial court properly conclude that plaintiffs failed to meet their burden of proof in establishing their claim that defendant breached the redemption provision of its marketing plan?

2. Did the trial court correctly find that the redemption provision of defendant's marketing program was not ambiguous?

3. Can plaintiffs now assert waiver and estoppel in the context of this appeal even though these theories were not raised or pursued by them in the trial court?

## STATEMENT OF THE CASE

### Nature of the Case

Plaintiffs below, both past sales representatives of defendant, Brite Music Enterprises (hereinafter "Brite"), brought this action contending that Brite's redemption of accumulated "carry-over points" in February of 1991 somehow breached the contractual relationship between the parties. The concepts of carry-over points and redemption thereof were implemented concurrently by Brite in its 1982 marketing plan which is attached hereto in the Addendum. (See page 10 of Trial Exhibit D-7 in the Addendum hereto).

Although the marketing program was not a specific contractual agreement between plaintiffs and Brite, nevertheless the trial court held that it did constitute a contractual relationship between the parties (the specific nature thereof was, however, not determined). The court, after plaintiffs presented all their evidence, found that Brite's redemption of plaintiffs' carry-over points in 1991 was done in accordance with the formula set forth in the marketing plan. The trial court also held plaintiffs failed to establish that Brite was prohibited from undertaking a redemption of points as contemplated by the marketing program. Consequently, having found that Brite adhered to the redemption formula and that nothing in the marketing plan prohibited Brite from redeeming points, the trial court granted Brite's motion for a directed verdict. After several post-trial motions, this appeal followed.

### STATEMENT OF FACTS

Plaintiffs Weaver and Palmer became sales representatives for defendant Brite Music Enterprises in October of 1980 and February of 1982 respectively. (Record, pages 408, 417 and 418). At that time, the marketing program of Brite which governed compensation earned by sales representatives did not involve or otherwise utilize the concept of "carry-over points." Subsequently, Brite did implement a new marketing program that included the concept of carry-over points. Concurrently with the initial implementation of the concept of carry-over points was a provision for redemption thereof at the rate of \$100.00 for each 5,000 points accumulated. The carry-over point and redemption provisions remained coexistent and unchanged from their original implementation in 1982 until the 1991 redemption which plaintiffs contend breaches their contracts. (See Brite's Marketing Program, Trial Exhibit D-7, page 10, in the Addendum hereto).

In 1991, Brite made a redemption of plaintiffs' carry-over points in accordance with the provisions of its 1982 marketing program by redeeming each increment of 5,000 carry-over points accumulated by plaintiffs for \$100.00. (See Final Order of Dismissal, Record page 688). Plaintiffs conceded that this redemption was made using the formula of \$100.00 for each 5,000 points as specified in the marketing plan. (See transcript of Testimony of Catherine Palmer, page 91 line 20 through page 92 line 3). Notwithstanding Brite's compliance with the formula set forth in the redemption provision of the marketing program,



plaintiffs sued Brite contending that it had breached its contractual relationship with them. (See Amended Complaint, Record pages 408-415).

#### SUMMARY OF ARGUMENTS

1. Because plaintiffs filed this suit alleging defendant breached its contractual relationship with them, they bear the burden of proving that defendant did, somehow, violate a contractual obligation owed to plaintiffs. The trial court's finding that plaintiffs failed to establish a breach of contract was consistent with the undisputed fact that Brite did redeem plaintiffs' carry-over points in strict compliance with the provisions of Brite's marketing plan.

2. Plaintiffs' contention that the marketing program's redemption provision can be exercised solely and exclusively by them, and that Brite is precluded from doing so, requires a strained interpretation of the clear language of the provision as well as the insertion of additional language not present in it. Consequently, the only interpretation of the provision which can be reached, given the language of the marketing plan itself, is the conclusion arrived at by the trial court which is that either party could redeem.

3. Plaintiffs' arguments that the marketing plan should be construed against Brite and that the course of dealing between the parties should be utilized to interpret the provision are both misplaced. Such rules of construction are only applicable

if a finding of ambiguity has first been made. In this case, the court specifically found the language to be unambiguous. Therefore, such rules of construction need not be resorted to.

4. Plaintiffs did not allege or pursue the theories of waiver and estoppel before the trial court and are therefore precluded from doing so now. In fact, the trial court on at least two occasions raised these matters and plaintiffs either ignored the trial court's inquiry or attempted to justify their failure to earlier address such issues.

### ARGUMENT

#### POINT I

#### **THE TRIAL COURT PROPERLY CONCLUDED THAT PLAINTIFFS FAILED TO MEET THEIR BURDEN OF PROOF IN ESTABLISHING THAT DEFENDANT BREACHED THE CONTRACT**

Plaintiffs sued Brite Music contending that Brite's 1991 redemption of plaintiffs' carry-over points breached the contractual agreement between them. It is, thus, incumbent upon plaintiffs to establish and prove each of the elements of their claimed breach of contract. This they have not done.

As noted in the Statement of Facts above, the facts established by plaintiffs at trial consisted of the following:

- a) Plaintiffs were both sales representatives for Brite.
- b) Plaintiffs sold products under Brite's 1982 Marketing Program which contained a provision for accumulating carry-over points as well as a concurrent feature for redemption thereof.

- c) Brite redeemed plaintiffs' carry-over points in strict compliance with the redemption formula set forth in the marketing program.
- d) Nothing in the redemption provision or the marketing program in any way prohibited Brite from exercising the redemption option.

None of these facts was opposed by Brite. Thus, the trial court had no material facts in dispute. The relationship between the parties was defined. The language of the contract was clearly established, and Brite's performance thereunder was without dispute. It, therefore, became impossible for plaintiffs to prove a breach of contract by asserting that Brite failed to comply with its own marketing program.

Rather, the only way in which plaintiffs could establish that Brite violated the redemption provision would be to prove that the language prohibits Brite from redeeming plaintiffs' carry-over points in accordance with the stated formula. This, of course, is a question of law to be determined by the trial court. See Buehner Block Co. v. UWC Associates, wherein the court stated:

"The interpretation of a written contract may be a question of law determined by the words in the agreement."

752 P.2d at 895. The specific language of Brite's marketing program (attached hereto as Addendum A and identified at trial as Exhibit D-7) provided for the accumulation and redemption of "carry-over points" as follows:

"As you continue to exceed 1200 points per month, the increasing carry-over points may accumulate for as long as you desire. However, each increment of 5,000 carry-over points is redeemable for a check from Brite for \$100. Redeeming points in this manner does not affect your life-time point accumulation or the benefits you may eventually derive therefrom." (See Marketing Program at page 10).

In view of this language and based upon the undisputed facts before it, the trial court simply held that plaintiffs "failed to carry their burden of proving that defendant's redemption of plaintiffs' carry-over points in 1991 constituted a breach of the foregoing 1982 marketing program provisions. Plaintiffs' position that the right of redemption is exclusively theirs and cannot be exercised by defendant is not supported by the clear language of the provision itself." (Final Order of Dismissal, Record page 688).

As the court aptly observed:

"If I can look at the terms of this provision, and through its terms to me, to my satisfaction find no conflict, then that becomes a matter of law ...

If, in fact, Brite paid off 5,000 points for \$50.00, that's a breach of this provision. No doubt about it. If, in fact, it says here, however, only plaintiffs or sales representatives may redeem, and Brite redeems, there is a breach. That isn't what it said. ... It does not say may be redeemable for a check when plaintiffs ask for it from Brite for \$100.00. It speaks clearly in terms of each increment of 5,000 carry-over points is redeemable for a check from Brite for \$100.00. ...

But there is, in my estimation, nothing to indicate, for me to interpret this provision as plaintiffs are asking me to."

(Transcript of Motion for Directed Verdict, pages 56 line 18 through 57 line 23).

Plaintiffs have failed to marshal any evidence or point to any legal theory that would support their argument that they met their burden of proof in establishing that Brite had no legal right to redeem carry-over points in accordance with the 1982 marketing plan. Plaintiffs' complete failure to do so was apparent to the trial judge and resulted in the granting of Brite's motion for a directed verdict. That same deficiency clearly compels this court to uphold that ruling.

#### **POINT II**

#### **THE TRIAL COURT CORRECTLY FOUND THE REDEMPTION PROVISIONS OF DEFENDANT'S MARKETING PLAN TO BE UNAMBIGUOUS**

The trial court held that plaintiffs failed to prove that the 1982 marketing plan's redemption provision prohibited Brite from redeeming plaintiffs' carry-over points in accordance therewith. Having thus been unsuccessful, Plaintiffs now contend that the redemption clause is ambiguous and the jury must resolve alleged factual issues relating thereto. This, however, is simply incorrect.

As noted above, there is no factual dispute concerning plaintiffs' breach of contract claim. Brite's redemption was made in precise compliance with the relevant provisions of its marketing plan. The only way for plaintiffs to prevail, is for them to prove that the 1982 marketing plan's redemption provision

actually prohibits Brite from redeeming carry-over points. In a belated effort to meet this burden, plaintiffs now contend that the redemption clause is ambiguous. They then argue that resolution of the ambiguity is a jury question. However, as the court in Buehner Block Co. v. UWC Associates, 752 P.2d 892 (Utah 1988) noted,

"Contract terms are not necessarily ambiguous simply because one party seeks to endow them with a different meaning than that relied upon by the drafter."

752 P.2d at 895.

The only evidence cited by plaintiffs in support of their allegation of ambiguity does exactly what is contemplated by the foregoing quote. That is, plaintiffs argue that because they think Brite should not be able to redeem, it is in fact true that Brite cannot. In support of this proposition, plaintiffs rely entirely upon the testimony of Cathy Palmer as set forth on page 21 of their brief. (The reference to the record in the brief incorrectly cites Palmer Deposition at page 87. The correct cite is Palmer Deposition at page 86 lines 9-15). Even this reference to the transcript, however, requires plaintiffs to use additional language to support their strained interpretation. The quote in the brief inserts the reference to "sales representatives" in addressing who can exercise the option to redeem carry-over points. Such language does not appear in the trial transcript.

Moreover, that cite to plaintiff Palmer's testimony relies on Brite's "printed material" which, in turn, refers to the 1982 marketing plan attached as the addendum to this brief and marked

as Exhibit D-7 at trial. In effect, plaintiff Palmer states nothing more than that she interprets the redemption clause of Brite's marketing program to grant her the option to redeem her carry-over points if she chose to. There are two reasons why this reference does not support the argument plaintiffs make.

First, whatever plaintiff Palmer may have desired the provision to say, it does not necessarily follow that the terms are therefore ambiguous and must be interpreted as she wishes. The trial court noted this incorrect reasoning when it stated:

"It may have been the understanding of people years ago that the world was flat and it may have been a universal understanding, but that does not make it a fact, that does not make it so."

(Transcript of Motion for Directed Verdict, Page 56, lines 15-18). The Utah Supreme Court acknowledged the faulty nature of this approach in the Buehner case cited above. Plaintiffs, however, refuse to adhere to this guidance and insist that the Court of Appeals accompany them on their misguided adventure. They do so without any factual or legal support for their position.

The second flaw in plaintiffs' approach is that reading the provision to allow sales representatives to redeem does not mean at all that Brite, therefore, cannot redeem. This reference to plaintiff Palmer's testimony serves no other purpose than to simply indicate that she interpreted the provision to give her an option to redeem. Brite has always acknowledged that not only plaintiff Palmer, but all Brite's marketing representatives had

the right to redeem carry-over points. The issue here is not whether plaintiffs can choose to redeem, but, rather, whether they met their burden of proving that Brite did not have such a redemption right. Clearly they have not. The provision is a mutual, bilateral redemption right. It is not exclusive as plaintiffs want to believe.

Plaintiffs go to much length in their brief to discuss the three possible interpretations of the redemption provision in the 1982 marketing plan. Their argument that the redemption right is solely and exclusively that of plaintiffs is no more supported by the language of the provision than an argument to the effect that the redemption right is solely and exclusively that of Brite. Rather, the only possible interpretation of the provision in the context in which it appears is that both parties can redeem.

To reach the conclusion proffered by plaintiffs requires the insertion of additional language that does not currently exist in the provision. Plaintiffs allege that the redemption right is a privilege afforded only to marketing representatives. To establish this, plaintiffs would have the court rewrite the redemption provision by replacing the existing word "however" with the new word "additionally" and inserting the words "by only you" after the word "redeemable." Thus, plaintiffs would have to rewrite the redemption provision to read as follows:

"Additionally, each increment of 5,000 carry-over points is redeemable by only you for a check from Brite for \$100.00."



Unfortunately for plaintiffs, that is not what the redemption provision provides. In reality, the provision appears immediately following the accumulation right granted to Brite's marketing representatives. As such, it appears as a qualification on that right. It begins with the term "however" and then clearly states that such carry-over points, although they may be accumulated, are subject to redemption.

Given the three alternative constructions of this provision available to the trial court, it is evident that the only conclusion which could be reached is that the provision is a mutual right of redemption that could be exercised by either party. In view of the fact that plaintiffs bear the burden of proving that defendant's redemption was specifically prohibited by this provision, it is clear that the trial court properly ruled in finding the term to be unambiguous.

### POINT III

#### **IN THE ABSENCE OF ANY AMBIGUITY, THE RULES OF CONSTRUCTION ADVANCED BY PLAINTIFFS ARE INAPPLICABLE**

Plaintiffs also contend that the trial court erred in not construing the agreements against Brite and/or in failing to apply some nebulous concept of course of dealing between the parties to arrive at the conclusion advocated by plaintiffs. Both these arguments, however, are misplaced. The Utah Supreme Court has clearly stated to the contrary in Buehner Block Co. v. UWC Associates, 752 P.2d 892 (Utah 1988) as follows:

"In view of our conclusion, appellants' reliance on Skousen v. Smith and General Mills, Inc. v. Cragun to support their argument that the construction commitment letter must be construed more strongly against its drafter, Home , is misplaced in this case. As we stated in Auto Lease Co. v. Central Mutual Insurance Co.:

'[T]hat rule has no application unless there is some genuine ambiguity or uncertainty in the language upon which reasonable minds may differ as to the meaning. That requirement is not satisfied because a party may get a different meaning by placing a forced or strained construction on it in accordance with his interest.'

(citations omitted) 752 P.2d at 896. The trial court's finding of no ambiguity precludes the application of this rule of construction.

Plaintiffs' allegation that some course of dealing between the parties should be applied in construing the redemption provision is also misplaced. First, course of dealing, industry usage and course of performance are commercial transaction terms governed by Article II of the Uniform Commercial Code. This, however, is not a commercial transaction. Thus, the application of such concepts in this situation is dubious at best.

Moreover, the application of these tools is also conditioned upon a finding of ambiguity. As stated by the court in Hector, Inc. v. United Savings & Loan Assoc., 741 P.2d 542 (Utah 1987):

"Course of dealing or industry usage and custom is admissible evidence to construe ambiguous terms of an agreement or to supply missing terms in an otherwise valid agreement, at least under certain circumstances;"

741 P.2d at 546. However, as noted in Point II above, the court properly found that the redemption provision was not ambiguous and therefore these rules for construing ambiguities do not come into play. Plaintiffs' reliance upon them is, therefore, misplaced and cannot form a basis for reversal of the trial court's ruling.

**POINT IV  
PLAINTIFFS CANNOT ASSERT THE PRINCIPLES OF  
ESTOPPEL AND WAIVER FOR THE FIRST TIME ON  
APPEAL.**

Plaintiffs' final argument is that Brite should be estopped from exercising its right to redeem carry-over points in accordance with the 1982 marketing plan. Plaintiffs, however, never raised or made this argument before the trial court. In fact, the issue was discussed on only two occasions. First, during Brite's argument of its Motion to Dismiss, the court asked Brite's counsel if it was necessary to examine the possibility of an estoppel. (See Transcript of Motion for Directed Verdict pages 14 through 16). At no time prior to this had the issue ever even been raised at all. Immediately following that inquiry, plaintiffs' counsel commenced argument in opposition to the Motion for Directed Verdict and never once addressed or mentioned the concept of estoppel.

After the completion of plaintiffs' argument in opposition to the Motion for Directed Verdict, and during rebuttal by defense counsel, the court again inquired of Brite's counsel about estoppel:

THE COURT: And there's no estoppel here regardless of how the court would look at quasi-estoppel because it hasn't been pleaded and hasn't been relied on.

MR. SUTHERLAND: That is correct, your Honor.

MR. DIBB: Your Honor, that's argument to the jury.

THE COURT: And I invited that only because that was what I was thinking about.

MR. DIBB: The complaint doesn't have to plead estoppel or waiver. I'm a plaintiff and I plead that for my client. I don't have to plead estoppel or waiver to plead -- it is not a deficiency at all now.

THE COURT: I understand

MR. DUFFIN: Let me say --

MR. SUTHERLAND: Your Honor, are we going to allow both counsel to argue the motion?

MR. DUFFIN: I was going to say it is really an ambiguity.

(Transcript of Motion for Directed Verdict page 54 lines 8-25).

Thus, plaintiffs' only response to the court's inquiry concerning estoppel the first time was complete silence. On the second occasion, plaintiffs actually objected to the fact that it had been raised and attempted to justify their failure to earlier address the issue. As stated in Matter of Estate of Justheim, 824 P.2d 432, 435 (Utah App. 1991):

"Appellants did not plead estoppel at any time, nor assert it as an issue in the pretrial order. Their estoppel theory was first mentioned in their post-trial "motion for judgment notwithstanding the verdict and oral judgment of the court." Appellants' estoppel ground was incorporated by reference into their motion for a new trial. Estoppel must be pleaded or it is waived. Manger v.


Davis, 619 P.2d 687, 696 (Utah 1980) (failure to plead estoppel waives the defense under Rule 12(h) of the Utah Rules of Civil Procedure). Thus, we cannot say that the trial court abused its discretion or acted unreasonably in denying appellants' motion for a new trial on the ground of estoppel when that doctrine was not raised before or during the trial."

Consequently, it is clear that plaintiffs have waived these theories and cannot now pursue them in their appeal.

### CONCLUSION

It is evident that the trial court properly granted defendant's motion for a directed verdict in this case. There were no factual issues in dispute, and the court correctly applied the law to the facts. As they failed to carry their burden of proof below, plaintiffs have not given this court any basis to support a reversal of the trial court. Accordingly, defendant respectfully requests that this court enter an order affirming the trial court's granting of defendant's motion for a directed verdict.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of January, 1996.

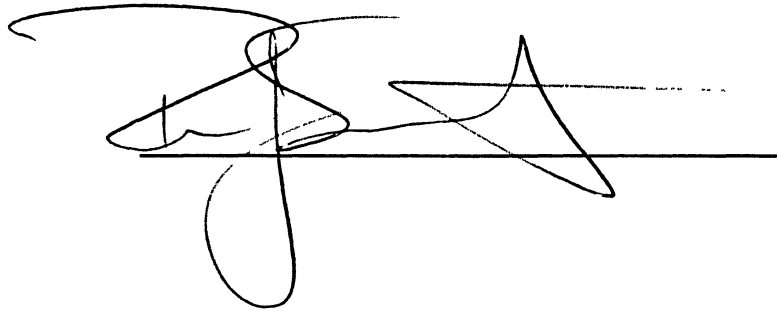


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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16<sup>th</sup> day of January, 1996, I caused a true and correct copy of the foregoing BRIEF OF APPELLEE to be mailed, postage prepaid, to:

Bruce L. Dobb  
Jensen, Duffin, Carman, Dobb & Jackson  
311 South State Street, Suite 380  
Salt Lake City, Utah 84111

A handwritten signature in dark ink, appearing to be "Bruce L. Dobb", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

## **ADDENDUM**

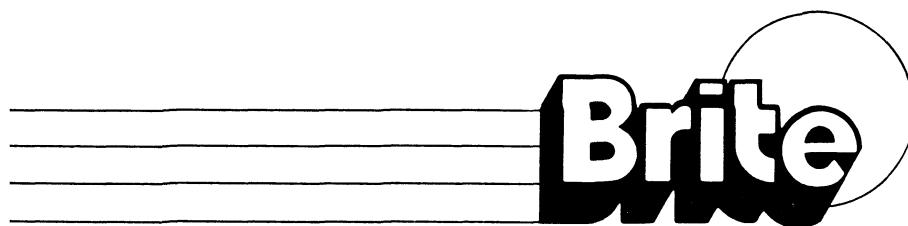
Music for Children by Janeen Brady

# Your Brite Opportunity



## A BUSINESS OF YOUR OWN

Song Books, Stereo Records  
and Cassettes, featuring sparkling,  
wholesome music for children



Brite Music Enterprises Inc.

D-7  
received



# THE BRITE MUSIC MARKETING PROGRAM

The immediate benefit of becoming a Brite distributor is a personal one. As you share this music with others you experience the satisfaction of enriching their lives — of seeing children become more committed to developing wholesome qualities, and of seeing families become more cohesive, more fulfilled, and happier.

Equally attractive is the potential for financial success in Brite Marketing. Whether your intention is to beat today's inflation or to build a nestegg for tomorrow's new demands, you can realize that goal through the Brite Marketing Program.

## WHAT IS BRITE MUSIC MARKETING?

Brite Music Marketing, founded in the spring of 1980, produces and distributes entertaining and uplifting music for children. Its products are sold through independent distributors in a direct sales, multi-level program in which you, as a distributor, realize a profit not only from your own sales, but from bonuses paid you on the production of those distributors whom you sponsor and who are building their business within your organization. Designed primarily for people who want to set up a part-time business, Brite Marketing provides infinite possibilities for you as you gain enthusiasm for the products and the program.

## CHECK THESE BENEFITS WHICH YOU ENJOY AS A BRITE DISTRIBUTOR

- ☐ **Our Products Are Widely Known and Highly Regarded.** Once you've learned a few basic selling skills the products practically sell themselves as you demonstrate them to others.
- ☐ **The Products Enhance the Quality of Children's Lives and Hence the Lives of Entire Families.** These materials are providing a vital means of countering the demoralizing influences in the lives of today's children.
- ☐ **The Program Provides a Potentially Higher Income** for efforts invested than almost any other type of work, plus it provides many tax advantages.
- ☐ **Our Distributors Do No extensive Bookkeeping.** When you receive your bonus check from the company each month, you also receive a detailed computer statement and breakdown of your Personal Bonus and the Management (override) Bonuses you earn on those whom you sponsor.
- ☐ **The Business Requires Virtually No Shipping of Products By You.** All products are shipped by the company directly to distributors or their hostesses, to schools, etc.

- ☐ **Our Distributors Maintain No Large Inventories.**
- ☐ **Our Company Provides Products Which Are Unique, With Virtually No Competition.** Nowhere else will you find in a direct marketing program products that stimulate so much excitement and contribute to so many lives. The quality, charm, and magic of Janeen Brady's music is unsurpassed anywhere.

## GETTING STARTED

To become a Brite Distributor you:

1. Are sponsored by another Brite Distributor.
2. Study carefully the information in this booklet.
3. Read, fill out, and sign a Distributor Agreement.
4. Select one of the three sales kit options listed below and submit to the company payment for the sales kit together with your signed Distributor Agreement.

We will send a letter welcoming you as a new Brite Distributor and informing you of your Brite Business I.D. number. We will also mail your sales kit. You may begin earning money immediately by purchasing products from Brite at a discount and selling them at retail.

You may demonstrate the products: (1) for individuals, (2) for groups of people at home presentations, (3) for libraries, schools, preschools, and for other people involved primarily with children, and (4) for those interested in organizational fund raising.

## SALES KIT OPTIONS

### **Option 1 — \$29.00**

This kit contains a supply of sales and training materials and demonstration tapes sufficient to begin holding presentations, together with a beginning group of Brite products valued at \$32.75 Suggested Retail Price (SRP).

### **Option 2 — <sup>52</sup>~~\$47~~.50**

This kit contains the same sales and training materials as Option 1, but the products are valued at \$40.70 SRP. Also included is the Brite Easy Show Display Stand, a \$18.50 item. The Easy Show which includes 40 illustrations and 40 poster boards is a sales tool that has paid for itself over and over again for those distributors who are using it in their presentations. (Add \$4.50 for shipping.).

### **Option 3 — <sup>197</sup>~~\$168~~.00**

This kit contains the same sales and training materials as Option 1, and a deluxe selection of products valued at \$62.10 SRP, the Easy Show, and a high quality stereo tape recorder/player. (Add \$9.50 for shipping.)

## **CERTIFICATION**

Becoming certified means that from the time you started with the company, you have purchased from Brite \$300 or more Bonus Volume (BV)\*. At this point you will be recognized in Brite's newsletter and you will receive an attractive certificate designating your status. In addition, you are eligible to receive \$15 toward the purchase price of a stereo tape recorder. (Refer to the provisions of the stereo reimbursement program.)

### **Quick Starter**

If you certify before the end of the first full calendar month after you receive your sales kit, and if you have held at least four presentations by that time, you will receive an excellent selection of Brite products valued at \$31.80 suggested retail price.

## **ACTIVITY REQUIREMENT**

You are considered active as long as you purchase at least \$80 BV during each of the four quarters of the year. (January to March, April to June, etc.)

The benefits of remaining on an active status with Brite are that ~~you are able to order products at wholesale, receive the company newsletter, and earn bonuses on your personal sales and on the sales of those you've sponsored.~~

After a period of inactivity, you can become active again by paying a \$10 recertification fee. All benefits are then restored, except you will have permanently lost your previous downline organization.

When a distributor becomes inactive, his downline distributors automatically move up and close the gap between themselves and the inactive distributor's sponsor.

## **MULTI-LEVEL BENEFITS**

The charts on the following pages present the bonus structure of the Brite Multi-level Marketing Plan. The first chart lists the bonus percentages you receive on your own sales, and the management bonuses on the sales of your organization.

The second chart lists the bonuses you receive for persistent production.

As you study the first chart you'll see that the point level you attain each month is very important in that it determines just which bonus percentages apply to you that month. The chart delineates five point levels and shows that you could increase your monthly Brite income from 26% to 42%, depending on the point level you achieve that month.

The marketing plan emphasizes active recruiting coupled with personal sales. The

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\**Bonus Volume (BV) — See Definition of Terms on page 11*

more actively you recruit, the greater will be your management bonuses. The higher your personal sales and those of your new recruits, the more points you will earn and the greater the percentages you will receive in all bonuses.

## BRITE MARKETING PLAN BONUS PERCENTAGES CHART

The Monthly Point Levels You Can Attain	The % Discount You Receive When You Buy Brite Products*		The Bonus % You Receive on Those Purchases	Total % of Earnings on Your Personal Purchases	Management Bonuses You Receive on the Sales of:				
					Your 1st-Line Distributors	Your 2nd-Line Distributors	Your 3rd-Line Distributors	Your 4th-Line Distributors	
1200 min.	26%	+	16%	=	42%	10%	5%	4%	3%
900 min.	26%	+	12%	=	38%	8%	4%	3%	2%
600 min.	26%	+	8%	=	34%	6%	3%	2%	1%
300 min.	26%	+	4%	=	30%	4%	2%	1%	.5%
Less than 300	26%	+	0%	=	26%	0%	0%	0%	0%

*\*All percentages are based on the BV of each product. (Exceptions to this policy are the wood puzzles, which have a special bonus schedule.)*

## DETERMINING YOUR MONTHLY POINT LEVEL

Each month you receive points from three sources. The total of these points determines which point level you achieve for the month:

1. The first source of points is your own personal sales: one point per \$1 BV.
2. The second source is a special benefit you receive as a result of your bringing new people into the company who become your first-line distributors. For the first 600 points each of them earns for himself from his own sales, Brite will award you 600 points as well. For example, if one of your new first-line distributors earns 200 points in February, 300 points in March and 300 points in April, the company will award you 200 points in February, 300 points in March and 100 points in April, (a total of 600) in addition to the points you earn for yourself during those months.
3. The third source is "carry-over" points from the previous month. These are points you earned during the previous month in excess of those needed to qualify for one of the five point levels. For example, if you accumulate 450 points in June, you are on the 300-point level for June and 150 points are automatically carried over into July. Then, if you accumulate 450 points during July, you are on the 600-point level for July with the combination of current and carried-over points.

## PERSISTENCY BONUS CHART

Minimum Points Received Each Month of The Calendar Quarter	Bonus Paid on Organizational Volume	Maximum Bonus Paid Quarterly
1,200	2%	\$400
900	2%	\$200
600	2%	\$100
"Carry-Over" points from previous months <i>do not count</i> towards persistency bonus.		

### PERSISTENCY BONUS

If you are persistent — if, during each of the three consecutive months in any of the four calendar quarters, you achieve one of the point levels listed above — you are entitled to the special Persistency Bonus for that quarter. The point level for this bonus is determined by combining the points you earn for yourself with those you accumulate from your new first-line distributors; it does not include carry-over points. But the bonus is paid as a percentage of the earnings of **your entire organizational structure**, down four levels, retroactive to the beginning of the quarter.

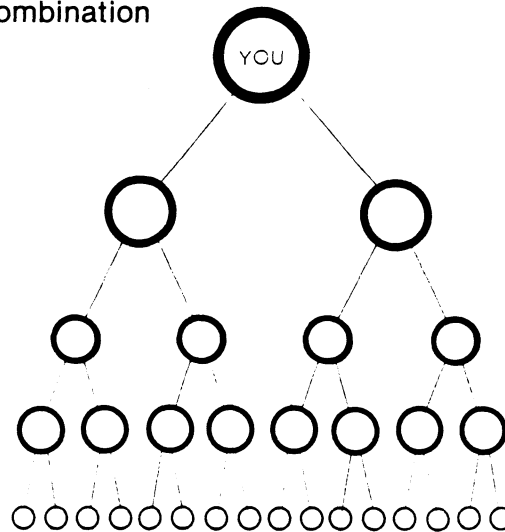
**Your organization** could consist of any of the following people or combination of people:

**Your 1st Line Distributors**  
(those whom you sponsor)











**Your 2nd Line Distributors**  
(those sponsored by your 1st Line people)

**Your 3rd Line Distributors**  
(those sponsored by 2nd Line people)

**and Your 4th Line Distributors**  
(sponsored by 3rd Line people)



## HOW BRITE'S MARKETING PLAN CAN WORK FOR YOU\*

Month	Distributor(s)	Products Purchased from Brite (BV)	Points You Receive	Point Level You Attained	The Discount You Received on Products You Purchased	Personal Bonus on Products You Purchased
1st	You	\$300	300	300	26% 	4% 
2nd ▲	You	\$300	300		26% 	8% 
	Your 1st Line Distributors (A)	\$300	300	600		
3rd ▼	You	\$300	300		26% 	8% 
	Your 1st Line Distributors (A)	\$300	300			
	Your 1st Line Distributors (B)	\$150	150			
	All 2nd Line Distributors	\$300		600		
4th ▼	You	\$600	600		26% 	16% 
	Your 1st Line Distributors (A)	\$300				
	Your 1st Line Distributors (B)	\$450	450			
	Your 1st Line Distributors (C)	\$150	150			
	All 2nd Line Distributors	\$500		1200		
5th	You	\$800	800		26% 	16% 
	Your 1st Line Distributors (A)	\$400				
	Your 1st Line Distributors (B)	\$300				
	Your 1st Line Distributors (C)	\$450	450			
	Your 1st Line Distributors (D)	\$300	300			
	All 2nd Line Distributors	\$700				
	All 3rd Line Distributors	\$500		1200		

**Note:** No provision is made on this illustration to show carry-over points.

\*Intended merely as a hypothetical illustration of the workings of the Brite Music Marketing Plan

(Refer to the Brite Marketing Plan Bonus Percentages Chart on page 6)

Management Bonuses You Receive on the Sales of:				Total Sales of Your Organization for the Calendar Quarter	Your Persistency Bonus	Amounts You Earned	Your Total Earnings for the Month
Your 1st Line Distributors	Your 2nd Line Distributors	Your 3rd Line Distributors	Your 4th Line Distributors				
						\$ 78.00 \$ 12.00	\$ 90.00
						\$ 78.00 \$ 24.00 \$ 18.00	\$120.00
6%							
						\$ 78.00 \$ 24.00 \$ 18.00 \$ 9.00 \$ 9.00	\$137.00
6% 6%	3 %						
						\$156.00 \$ 96.00 \$ 30.00 \$ 45.00 \$ 15.00 \$ 25.00 \$ 73.00	\$440.00
10% 10% 10%	5 %			\$3,650.00	2%		
						\$208.00 \$128.00 \$ 40.00 \$ 30.00 \$ 45.00 \$ 30.00 \$ 35.00 \$ 20.00	\$536.00
10% 10% 10% 10%	5% 4%						

## **STEREO REIMBURSEMENT PROGRAM**

One of the nicest parts of selling Brite's products is that a presentation provides an opportunity for your customers to listen to terrific music. Since using a better quality tape player will produce better sound and so boost sales, we encourage all our distributors to use high-quality equipment. Brite Music will reimburse you, as a distributor, up to \$120 toward your purchase of a high-quality stereo tape player. The first \$15 comes when you become certified and present proof of your stereo purchase. You will receive another \$35 for each additional \$1,750 BV of personal sales. The time limit on this offer is one year from the date you become a Brite distributor. The stereo you receive from the company as part of the Option 3 sales kit qualifies for this reimbursement.

## **ACCUMULATING POINTS**

As you continue to exceed 1200 points per month, the increasing carry-over points may accumulate for as long as you desire. However, each increment of 5,000 carry-over points is redeemable for a check from Brite for \$100. Redeeming points in this manner does not affect your life-time point accumulation or the benefits you may eventually derive therefrom.

## **INCENTIVES**

Brite Marketing regularly offers incentive contests and trips which are available to all qualifying Brite distributors. Included will be an annual convention which we are counting on to bring together as many of our distributors as possible for sharing ideas and training.

## **SHIPPING**

All orders, together with cashier's checks or money orders, are mailed to the Salt Lake City office. The orders are immediately processed and shipped by UPS on or before the next working day. Local distributors may telephone their orders, if they wish, and pick them up on specified days.

## **TRAINING**

We are developing a complete training program for distributors and guidelines for hostesses as well as better educational materials for all who use our products.

## **SALES TAX**

Each distributor charges and collects the correct amount of sales tax from each customer. The distributor then pays the sales tax to the state in one of the following ways:

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1. Apply for and obtain a tax number from your state and pay sales tax collected *directly to the state.*
2. In certain states designated by Brite send the sales tax amount to the company for payment to the state.

## **DEFINITION OF TERMS**

**BONUS VOLUME (BV)** — The dollar amount assigned to each product on which we calculate bonuses (may be different from the SRP).

**NET** — Dollar amount the dealer pays to Brite when ordering products. The difference between the net amount and the SRP is your profit.

**SUGGESTED RETAIL PRICE (SRP)** — The recommended selling price of our products. Our published suggested retail prices for all products are fair and non-inflated.

**MANAGEMENT BONUSES** — Bonuses you receive which comprise a percentage of the personal sales of the distributors in your organization.

**PERSONAL SALES** — *The bonus volume of purchases made by Brite distributors from the company.*

**SPONSOR** — The person who introduces you to Brite Marketing and helps you become a Brite distributor. It is his or her responsibility to teach you about the products and program, to keep in touch with you, and to answer your questions.

**DOWNLINE ORGANIZATION** — Distributors whom you sponsor direct to you (your first-line distributors), together with your second, third and fourth-line distributors. (See organizational chart on page 7)

**MINIMUM CHECK** — Brite will carry forward all check amounts less than \$10.

**MINIMUM ORDER** — \$35 BV is the minimum amount for which you will be given credit toward bonuses. Orders of less than \$35 BV will be processed and shipped as a convenience to you, but no bonus credit will be given.

**PAYMENT FOR ORDERS** — Money orders or cashier's checks, rather than personal checks, must accompany all orders.

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