



COMPETITION & EU

LUXURY

CASE C-230/16 COTY GERMANY: A REVOLUTIONARY JUDGEMENT FOR THE LUXURY INDUSTRY

Coty was the most anticipated case for the luxury industry. The Court of Justice of the European Union (“CJEU”) held that a prohibition imposed by manufacturers on authorised distributors from using third party internet platforms for the sale of their luxury products is compatible with European competition law, provided that certain conditions are met.

Coty Germany is one of Germany’s leading suppliers of luxury cosmetics. They sell luxury cosmetic brands via a selective distribution network, on the basis of a general framework distribution agreement uniformly applied throughout Europe. The agreement is supplemented by other more specific contractual clauses designed to organise said network.

Parfümerie Akzente has, for many years, distributed Coty Germany’s products as an authorised retailer, both at brick and mortar locations and over the internet. Internet sales are made partly through its own online store and partly via the “amazon.de” platform.

Coty justified its selective distribution system in the following terms: *“the character of Coty Prestige’s brands requires selective distribution in order to support the luxury image of these brands”*.

In its selective distribution agreement, regarding brick and mortar retail, the selective distribution agreement provided that each of the distributor’s sales locations must be approved by Coty Germany, which implies compliance with several requirements of a qualitative nature - regarding their environment, *décor* and furnishing.

Coty’s internet policy provided that *“the authorised retailer is not permitted to use a different name or to engage a third-party undertaking which has not been authorised”*.

Following the adoption of Regulation 330/2010, Coty presented its distributors with new terms and conditions which would replace the former agreement. According to these new rules, and in order to preserve the luxury image of its goods Coty’s distributors, such as Akzente, would be prohibited from selling on online marketplaces such as “amazon.de”.

These rules provided that *“the authorised retailer is entitled to offer and sell the products on the internet, provided, however, that that internet sales activity is conducted through an “electronic shop window” of the authorised store and the luxury character of the products is preserved”*.

As Parfümerie Akzente refused to approve and adopt the new rules, Coty brought an action before the German Courts seeking an order to prohibit Akzente from selling its products via the “amazon.de.” platform.

The German Court dismissed Coty's case arguing that the new terms and conditions infringe both German and European Antitrust Law and are, consequently, unenforceable. Coty took the decision to appeal to the Oberlandesgericht Frankfurt am Main, the Regional Supreme Court of Frankfurt am Main, which, in turn, requested guidance from the CJEU.

The national court referred four questions to the CJEU, which in fact are very straight forward. In essence, the questions were whether the protection of a "luxury image" is a parameter of competition compatible with article 101(1) TFEU and, whether a prohibition imposed on the members of a selective distribution system from selling via online marketplaces amounts to a restriction of competition by object within the meaning of article 101(1) TFEU – and, of course, a hardcore restriction within the meaning of the Vertical Block Exemption Regulation.

The CJEU decided that a selective distribution system designed, primarily, to preserve the luxury image of those goods is compatible with Article 101(1) TFEU on condition that the following criteria are met:

- resellers must be chosen on the basis of objective criteria of a qualitative nature;
- these criteria are laid down uniformly for all potential resellers;
- the criteria are not applied in a discriminatory fashion;
- the characteristics of the product in question necessitate such a network in order to preserve its quality and ensure its proper use; and,
- the criteria laid down do not go beyond what is necessary.

In its analysis, the Court makes explicit reference to its judgement in *Pierre Fabre Dermo-Cosmetique (C-439/09)* clarifying that the judgement "must be read and interpreted in

the light of the context of that judgment". Furthermore, the Court distinguishes both judgements because, unlike Coty, the prohibition imposed by *Pierre Fabre Dermo-Cosmetique* referred to all online sales and the goods "were not luxury goods, but cosmetic and body hygiene goods".

The Court held that in order to determine the luxury quality of a product, not only the material characteristics of the product should be analysed, but also of the *allure and prestigious image* which bestow on them an *aura of luxury*.

The Court held that Coty did not impose an absolute ban on online sales because distributors were free to sell the contractual products over their own online shops, advertise via the internet on third-party platforms and to use online search engines, therefore customers are usually able to find the online offer of authorised distributors by using such engines.

The Court also held that the restriction of selling via third party platforms does not go beyond what is necessary to attain the objective of preserving the luxury image of a good, and, even if it restricts a specific kind of internet sale, the prohibition does not amount to a restriction of customers, within the meaning of Article 4(b) of Regulation No 330/2010, or a restriction of authorised distributors' passive sales to end users, within the meaning of Article 4(c) of the same regulation.

The Court has made it clear that restrictions imposed on distributors of luxury products on the sale via third-party online platforms are compatible with European competition law as long as they comply with the criteria set forth in this judgement.

In this judgement, the Court brought clarity to the issue of the sale of luxury products via third-party online platforms, however, the problem regarding non-luxury products and how this judgement will be applied by national Courts and Competition Authorities remains uncertain.

This Newsletter does not constitute legal advice and is intended for distribution among Clients and Colleagues. The information contained herein should not be used for any other purpose or be reproduced, in whole or in part, without the express permission of SRS. If you require additional information on this topic, please contact us at: marketing@srslegal.pt; marketing@srslegal.pt

