

LEGAL/PRIVACY

European Parliament directive to help luxury brands keep trade secrets from competition

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Image courtesy of Dolce & Gabbana

By SARAH JONES

Courtesy of a new European Parliament decision, luxury brands will now have more protection for their intellectual property.

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A resolution on April 14 will see the institution of new rules that will enable companies to take legal action against those who steal trade secrets. For luxury brands that rely on craft and know-how, this will allow them to safeguard their carefully developed products from potential mass-market copycats.

"This is great news, particularly for luxury brands," said Rania Sedhom, managing partner at [Sedhom Law Group, PLLc.](#), New York. "In the U.S. we've enjoyed these protections for quite some time, but, until now, there has been no legal framework that protects company trade secrets in the EU.

"Now, companies on either side of the ocean can protect their uniqueness, their know-how, and their customer lists," she said. "With a variety of luxury brands vying for the same consumer, it is getting more difficult to secure customer spend. By allowing luxury brands to protect their customer lists and know-how, the EU is both acknowledging the importance of the relationships between luxury brands and their customers and also helping, rather than hindering, commerce.

"Moreover, 2015 was a transformative year for the luxury industry partially due to new technologies. Depending on the technology in question, the creators can now enjoy proprietary relief. This will undoubtedly make it easier for brands to create and protect new technologies and methodologies that they create to differentiate themselves and become a brand of choice."

Gaining approval

The European Parliament originally drafted a directive in November 2013 in an attempt at remedying the varied definitions of trade secrets that exist throughout member states. This decision comes following a compromise made in December 2015 between members of the European Parliament and negotiators from the Council of the European Union, which established a tentative wording of the bill.

The informal deal struck created rules to define the term trade secret as "information which is secret, has

commercial value because it is secret, and has been subject to reasonable steps to keep it secret." It also instituted a minimum benchmark for legal redress, and requires member states to make it possible for victims of theft be able to take their case to court.

This deal was explicitly designed to not restrict the work of press, but it does help protect confidential information that may be shared during a court case.



Asprey craftsman

Companies do not have cause for legal action if their trade secrets were used in an action that falls under the right to freedom of expression laid out in the EU Charter of Fundamental Rights.

The deal also does not protect companies whose trade secrets are divulged to reveal misconduct or wrongdoing in service of public good. Workers can also share internal information to their representative if it is necessary to follow European Union or their country's laws.

According to the [BBC](#), the new rules have been met with a lot of opposition, as petition against the bill gathered more than a million signatures. The basis of the negative response is worry that companies will define trade secrets in a way that endangers press or whistleblowers.

It may have amassed detractors, but some in the luxury world applauded the move.

The Quest for Essences Episode 1 May Rose in Grasse

The International Fragrance Association issued a statement of support, saying that it was pleased, as it would protect fragrance houses from having their carefully developed scents, which can take up to hundreds of years to develop through trial and error, from being ripped off. The sector relies heavily on secrets and know-how, from harvesting activities to selecting raw ingredients.

"What is particularly helpful for our sector is the provision, clarified by the Parliament during the legislative process, that the directive covers the unlawful use of information even when legally acquired," said Pierre Sivad, IFRA president in the statement.

"Our industry is particularly vulnerable to the misuse of information gathered legitimately by commonplace reverse engineering practices but then used in an unlawful way," he said. "This could include the launch of an identical copy or a client using the information to help a competitor create the same composition more cheaply."

The bill has passed the European Parliament, but it will need to be approved by the individual member states.

Tightening up

Other governments have made it easier for brands to seek legal recourse for copycats or trademark disputes.

French outerwear label Moncler has been awarded approximately \$448,000 in damages in relation to an intellectual property trademark infringement case.

Moncler's case went in front of the Intellectual Property Court in Beijing after the outerwear label accused Beijing Nuoyakate Gourmet Co., Ltd., commonly known as Nuoyakate, of producing counterfeits of its merchandise. According to Moncler, its court victory may be the first judgement under China's new Trademark Law to grant "maximum statutory damages" in cases of counterfeiting ([see story](#)).

Brands have also taken the copyright fight into their own hands, seeking ways of deterring knockoffs through their

product design.

In 2015 Italian fashion house Salvatore Ferragamo curbed the distribution of nearly 25,000 knock-off goods from China due to successful anti-counterfeiting measures.

Ferragamo continues to fight against counterfeiting in China and during the last year has blocked 91,000 online advertisements for fake goods with its labels, destroyed 12,500 fakes and confiscated another 12,400 as they were sent out of China. Part of its successful approach to deal with counterfeiting includes recognition in China as a "well-known brand," allowing Ferragamo to better combat the sale of fakes ([see story](#)).

"Hopefully, the trade secret protections now realized in the EU will help thwart the proliferation of fake goods," Ms. Sedhom said. "The EU law has tipped the scales toward the brand and the brands can more closely safeguard their know-how and use employment contracts, restrictive covenants, non-disclosure agreements and internal protocols to protect themselves.

"Some of the actions that luxury brands can take in the immediate, particularly those engaged in cross-border transactions is to review and revise or create internal policies and procedures regarding sensitive and proprietary information, review and revise or create IT policies that hinder the downloading or sharing of information from employer computer systems, and review and revise or create employment agreements, including restrictive covenants, non-compete and non-disclosure agreements."

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