

RETAIL

European court's Coty ruling could affect brands, distributors worldwide

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Chloé Love Story Eau Sensuelle fragrance

By DANNY PARISI

A high-profile legal dispute between fragrance brand Coty and a distributor could lead to serious consequences for ecommerce internationally.

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Coty asked a German court to prevent Akzente, an official distributor of its products, from selling its fragrances on Amazon. The complaint was dismissed initially, citing antitrust laws, but now the decision is moving to the European Court of Justice to decide if retailers have the right to forbid distributors from selling through certain ecommerce channels.

"This is certainly an interesting case to follow for United States companies," said Rania Sedhom, managing partner at [Sedhom Law Group](#), New York, an expert in business and commercial law. "The seminal question appears to be whether protection of a brand's image necessitates a selective distribution system, as that term is used by the European Court of Justice.

"If the European Court of Justice finds justification for restricting Akzente from selling through Amazon, it could start a maelstrom in the U.S. for Amazon, other distributors and ecommerce generally," she said. "Depending on how the European Court of Justice rules, it may thwart commerce, and ecommerce in particular.

"For example, will the European Court of Justice find that restricting commerce is an available protection or will it limit restrictions only when there is a quality concern, for instance, a brand suspects the goods that are being sold are fake, or will the restrictions lead to antitrust issues by [possibly] hindering trade and lessen competition?"

Selective distribution

With the growth of ecommerce in the past decade, entire industries have felt the shakeups to how shopping is done in the modern world.

This is especially true for luxury brands, which often rely on their products being difficult to acquire. Ecommerce has changed this to the point where luxury has had to balance between making products accessible around the world, while keeping a discerning nature to where and how they are sold.

That balance is at the heart of this legal dispute, in which Coty wants to limit the places where its licensed distributors can sell its products. Namely, Coty wants to keep Akzente from selling its products on Amazon.

For brands, limiting its distributors' ability to distribute is murky legal territory. While it is often permissible when limiting distribution is deemed critical to correctly distribute the product, limiting distribution simply for brand integrity reasons has no legal precedent.



Coty works with a number of big brands

Coty appealed the decision in the German court where it first brought its complaint, and now the European Court of Justice faces a difficult decision that could send ripples through the ecommerce world.

While the court decision applied to European law, the increasingly interconnected nature

of luxury and retail means that even U.S. retailers and distributors should be watching closely for effects of the upcoming decision.

"In the U.S., we are used to contract provisions that discuss exclusivity, whether it is an exclusive distribution, exclusive collection or exclusive product," Ms. Sedhom said. "For luxury brands, several contracts also prohibit retailers, online or otherwise, to sell unsold merchandise to third parties such as surplus retailers, eBay, Amazon, the RealReal, etc.

"However, what Coty is seeking goes far beyond that – it is a request to restrict commerce; it is a request to limit competition; it is a request that can lead to very ugly scenarios," she said. "If the European Court of Justice allows for a new normal of restriction, agreements will need to be revised, insofar as U.S. retailers are doing business abroad.

"It is unclear whether these rules will trickle down and permeate U.S. laws, but it is very likely that it will trigger change of some kind. Brands should monitor this case closely."

Potential consequences

An aspect of the luxury industry that often puts it at odds with the distributors it works with is that exclusivity is a major part of the appeal.

While most other retail industries immediately latched onto ecommerce, seizing onto the ability to reach more customers, luxury held off. Having their products be more accessible is not necessarily always good for luxury brands.

Instead, being able to control when and where their products are sold is an essential part of their commercial process. This puts it in contention with distributors, who stand to lose their independence to decide how to distribute the products they sell.



Coty wants to limit where its products can be sold online

Legal battles within the luxury industry are not new, such as the recent failed lawsuit from Yves Saint Laurent against Zadig & Voltaire.

Saint Laurent brought Zadig & Voltaire to Paris' commercial court for allegedly copying the in-store design of two of its boutiques in the French capital. Luxury brands consider a boutique's design a reflection of their lifestyle and aesthetics, so any perceived infringement of intellectual property is taken very seriously ([see story](#)).

But legal battles between brands and distributors is another thing, and with this decision

going all the way to the European Court of Justice, it could have serious consequences for one or both, depending on how the courts rule.

"Distributors likely will face the most challenges if the European Court of Justice allows Coty to prohibit a distributor from using Amazon," Ms. Sedhom said.

"A distributor is essentially a commerce agent, supplying products to stores and online marketplaces," she said. "If their business is restricted such that brands can dictate to whom they can distribute or sell, consumers will likely suffer in parallel with distributors.

"The cost of goods may increase as well to make up for lost opportunities."

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