

RETAIL

EU court rules luxury brands can block distributors from online selling

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Marc Jacobs' popular Daisy fragrance line is produced by Coty. Image credit: Marc Jacobs

By JEN KING

In a landmark ruling, the Court of Justice for the European Union (ECJ) has decided that luxury brands have the right to protect their image on online platforms such as Amazon and eBay.

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On Dec. 6, the ECJ ruled in favor of Coty, Inc., who brought German-based distributor Parfmerie Akzente to court nearly a decade ago to prevent the retailer from selling its perfumes on Amazon. Coty, who develops the fragrances of brands such as Chlo, Marc Jacobs and Calvin Klein, felt that being sold on Amazon and similar ecommerce sites dilutes the positioning of its perfumes and the fashion houses tied to them.

"In one way, it is a victory because the brands will be able to control their distribution channels throughout the E.U.," said Rania Sedhom, managing partner at **Sedhom Law Group**, New York, an expert in business and commercial law.

"That may assist brands maintain their scarcity and rarity," she said. "However, brands may find this control difficult to reconcile with their global distributors.

"The Coty ruling may prove divisive in global relationships with online retailers."

In luxury's favor

Coty's initial complaint was dismissed by the German court, which cited antitrust laws as its reasoning. But, in March, the German court decided to move the case to the ECJ for review.

The case set out to determine if brands have the right to forbid retail distributors from selling through certain ecommerce channels. Luxury makers are of the opinion that they should always have a say in how their products are sold to maintain and protect positioning and status.

Over the summer, Coty inched closer to having that question answered when an adviser to Europe's top court stated that the perfumer should be able to block Akzente from selling its goods on online marketplaces such as Amazon.

Akzente had been selling Coty products on sites including Amazon against the perfumer's wishes.

In a non-binding opinion, advocate general Nils Wahl at the European Union's Court of Justice said, "A supplier of

luxury goods may prohibit its authorized retailers from selling its products on third-party platforms such as Amazon or eBay" ([see story](#)).

The final determination of "Coty Germany GmbH v Parfmerie Akzente GmbH" was decided Dec. 6.

In its ruling, the ECJ said that it is Coty's right to protect its image by prohibiting authorized distributors from selling its products on third-party Internet platforms.

Per Reuters, the court explained that "Such a prohibition is appropriate and does not, in principle, go beyond what is necessary to preserve the luxury images of the goods."

The ECJ's decision extends to the 28 nations within the European Union.



Coty develops both perfume, hair care and color cosmetics for a variety of brands. Image credit: Coty

[Coty](#) has shared the following statement in regard to the ruling:

"Coty welcomes this decision which confirms that the character of luxury brands necessitates and justifies selective distribution, whatever the distribution channel.

"After years of uncertainty, this means luxury brands can determine how they are placed on digital platforms and it is a clear ruling for the protection of luxury brands' image, the defense of our teams' work and the protection of consumers' rights and information.

"As a consumer led company, we want to make our brands and products accessible for our consumers. It means that these can be accessed through our authorized retailers who will offer and promote our brands within the right environment and in the appropriate way.

"For online trade the decision of the ECJ will result in an enhanced distinctiveness and visibility of our authorized retailers as a trust mark for the purchase of genuine quality goods.

"We now look forward that this ruling be honored throughout [the] European Union."

Distribution blues

With the growth of ecommerce in the past decade, entire industries have felt the shake-ups 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.

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 ([see story](#)).

In 2010, LVMH, Richemont and others lobbied E.U. antitrust regulators to allow brand owners with less than a 30 percent market share to block retailers without bricks-and-mortar shops from distributing their products.

The ECJ ruling in Coty's favor is likely to cause a ripple effect for other E.U.-based distributors as well as in other markets such as Asia, where luxury brands also much deal with protecting intellectual property assets as well.

Now that Germany, eager to promote ecommerce in the past, must block distributors from selling goods on third-

party sites, in accordance with the ECJ's decision, what does this mean for online retailers going forward?

"I think ecommerce retailers will take a substantial loss," Sedhom Law Group's Ms. Sedhom said.

"With this ruling comes a luxury brand's ability to determine how they are placed on digital platforms, including ecommerce platforms," she said. "Brands now have the ability to reexamine their relationships and redefine who is an authorized reseller.

"Ecommerce retailers who sell globally will need to calibrate their technology in order to comply with various sales permissions and restrictions related to geography."

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